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*Attorneys for Christina W. Lovato, Chapter 7 Trustee*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re  
  
DOUBLE JUMP, INC.  
  
Debtor.

Lead Case No.: BK-19-50102-gs  
(Chapter 7)

Substantively consolidated with:

19-50130-gs	DC Solar Solutions, Inc.
19-50131-gs	DC Solar Distribution, Inc.
19-50135-gs	DC Solar Freedom, Inc.

CHRISTINA W. LOVATO,  
  
Plaintiff,  
  
v.  
  
NIXON PEABODY LLP,  
  
Defendant.

Adversary No.: 21-05072-gs

**TRUSTEE’S MOTION TO COMPEL AN  
ADEQUATE RESPONSE TO TRUSTEE’S  
FOURTH SET OF INTERROGATORIES,  
NO. 1.**

**Hearing Date: November 9, 2023  
Hearing Time: 1:30 pm.**

Christina Lovato, as plaintiff and chapter 7 trustee (“*Trustee*”), files this motion (“*Motion*”) under Rules 26 and 37, L.R. 7037, and this Court’s inherent authority, to compel an

adequate response to the Trustee's Fourth Set of Interrogatories, No. 1 ("***Interrogatory***").<sup>1</sup> In support, the Trustee states as follows.

**I. MEET AND CONFER**

After an email exchange, on September 26, 2023 the parties met and conferred by telephone regarding Nixon's inadequate response to the Trustee's Interrogatory. Nixon claimed to need more time and stated it would respond by email by October 2, 2023. After Nixon sent that email, the Trustee responded, and the parties had another telephone meet and confer on October 3, 2023, with email follow up. **Exhibit 1** (email chain). The parties did not reach an agreement. The Trustee is willing to confer further but is entitled to substantive responses.

**II. INTRODUCTION**

The Trustee sued Nixon for intentional torts. Nixon had "actual knowledge" of Carpoﬀ's wrongdoing. Nixon (i) knowingly assisted Carpoﬀ's breach of his fiduciary duties to DC Solar, (ii) violated its own fiduciary duties to DC Solar, (iii) lied to investors, (iv) violated ethical rules, and (v) violated state and federal statutes.

Through discovery, the Trustee has learned that Nixon concealed information, misled, and/or lied to DC Solar's independent auditor. Knowing that DC Solar's audited financial statements would be provided to investors, Nixon concealed DC Solar's massive liabilities including those related to the multiple ongoing IRS audits that Nixon was defending. Those IRS audits challenged the tax credits that were the subject of every Nixon opinion letter and explained that money was flowing in a circle with inadequate third party revenue. Truthful responses by Nixon would have led to exposure of the Carpoﬀ Ponzi Scheme. By concealing information from DC Solar's auditor, Nixon helped mislead investors about the true state of DC Solar's financial condition and violated its [REDACTED]. This is powerful evidence of Nixon's wrongdoing.

The Trustee served an interrogatory to dig deeper. Nixon responded with evasion, gamesmanship, and delay. Nixon claims it does not know if it complied with DC Solar's

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<sup>1</sup> The Trustee committed a scrivener's error, and although this was the Trustee's third set of interrogatories, she erroneously named it as her fourth.

1 instruction to disclose liabilities to DC Solar’s auditor. Nixon refuses to reveal why it concealed  
 2 information from DC Solar’s auditor, claiming those reasons are protected by the attorney client  
 3 privilege (whereby Nixon is the lawyer and its own client). But Nixon performed this work for its  
 4 client-DC Solar. For that reason and others, it is neither confidential nor privileged.

5 Indeed, through its Interrogatory Response Nixon has now produced its [REDACTED]  
 6 [REDACTED], which directs that the process of responding to an audit letter [REDACTED]  
 7 [REDACTED]. For this reason and others, Nixon holds no internal (Nixon-to-Nixon)  
 8 attorney-client privilege over its internal communications related to the response.

9 Nixon has failed to comply with F.R.C.P. 33 and must provide a complete and fulsome  
 10 response to the Trustee’s Interrogatory.

### 11 **III. EXHIBITS**

12 **Exhibit 1** is an email chain related to the meet and conferral process. It includes Nixon’s  
 13 improper unverified supplement to its Interrogatory Response (defined below), and then its  
 14 statement the next day seemingly retracting a portion of that unverified supplement.

15 **Exhibit 2** is the Trustee’s Interrogatory, which attaches each of the Auditor Letters. The  
 16 “*Auditor Letters*” are three letters from DC Solar to Nixon dated August 19, 2015, July 11, 2016,  
 17 and August 28, 2017 in which DC Solar directs Nixon to disclose to DC Solar’s independent  
 18 auditor (“*Auditor*”) liabilities or claims – whether asserted or unasserted – against DC Solar. This  
 19 information would relate to Nixon’s role in 30+ complex tax equity transactions as well as its  
 20 defense of multiple IRS audits.

21 The Auditor Letters are part of a system of controls designed to ensure the accuracy of DC  
 22 Solar’s financial statements and books and records.<sup>2</sup>

23 **Exhibit 3** is Nixon’s response to the Trustee’s Interrogatory (“*Interrogatory Response*”).

24 **Exhibit 4** is a [REDACTED] email chain where Nixon partners [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED]

<sup>2</sup> See generally *S.E.C. v. Grendys*, 840 F. Supp. 2d 36, 49 (D.D.C. 2012).

1 While it appears Nixon never responded to the 2016 Auditor Letter, Nixon refuses to say so or  
2 explain why.

3 **Exhibit 5** is Nixon's [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 Importantly, Nixon claims in its Interrogatory Response that it "followed" its [REDACTED]  
8 [REDACTED] But this is **impossible** given Nixon's (incomplete) admission that (1)  
9 it "believes" it did not send a response to the 2015 Auditor Letter; and (2) it cannot find a response  
10 to the 2016 Auditor Letter. Nixon's (in)actions are directly contrary to the letter and spirit of  
11 Nixon's [REDACTED], and Nixon's Interrogatory Response cannot be true.

12 Nixon offers no explanation for its failure to respond in violation of (1) direction from its  
13 client DC Solar; and (2) its [REDACTED]. Nixon must do so in response to  
14 the Interrogatory.

15 **Composite Exhibit 6** are examples of Nixon's bills to DC Solar, proving that Nixon  
16 charged DC Solar for considering the 2015 Audit Letter (even though Nixon failed to respond)  
17 and the 2017 Auditor Letter (Nixon did respond). Nixon's [REDACTED]  
18 [REDACTED]. This proves that Nixon's internal communications and documents  
19 addressing Auditor Letters was **performed on behalf of the client-DC Solar**. Nixon's work and  
20 analysis was not performed under a purported separate and private attorney client relationship  
21 between Nixon (as the lawyer) and Nixon (as the client). DC Solar was not an outsider to this  
22 analysis: Nixon charged DC Solar for the work and DC Solar paid for it.

23 **IV. AUDITOR LETTERS, AND NIXON'S RESPONSES / NON-RESPONSES,**  
24 **ARE IMPORTANT EVIDENCE**

25 The Auditor Letters and counsel's response are part of a system of controls to ensure the  
26 accuracy of DC Solar's books and records.<sup>3</sup> Nixon's [REDACTED] stress  
27 their importance:

28 \_\_\_\_\_  
<sup>3</sup> See generally *S.E.C. v. Grendys*, 840 F. Supp. 2d 36, 49 (D.D.C. 2012).

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 **Exhibit 5** (emphasis added). This is especially true here. Nixon was the designer, solicitor, and  
5 quarterback of every aspect of the tax equity transactions, and the gatekeeper to hundreds of  
6 millions of dollars of investments, which placed massive liabilities on DC Solar's shoulders. Nixon  
7 knew that the financial statements were being audited as a requirement of DC Solar's investors.  
8 Nixon knew its responses would bear on the accuracy of those financial statements.

9 Nixon was also counsel to DC Solar on at least three IRS audits challenging the tax credits.  
10 This has huge importance. **First**, those IRS audits challenged the tax credits that were the subject  
11 of every Nixon opinion letter. The IRS explained that money was flowing in a circle with  
12 inadequate third party revenue, contrary to Carpoff's and Nixon's communications to investors.  
13 And, if Nixon's IRS audit defense failed, then DC Solar faced massive liabilities. Truthful  
14 responses by Nixon would have eliminated any future transactions and led to the public exposure  
15 of the Carpoff Ponzi Scheme.

16 **Second**, Nixon knew that the IRS's challenge of the tax credits by one investment fund  
17 could lead to a domino-effect of IRS challenges, the rejection of tax credits for other transactions,  
18 past and present, and massive exposure to DC Solar. Nixon concealed this from investors in its  
19 communications with them and its written opinion letters. Nixon took the next step of helping keep  
20 this information out of DC Solar's audited financial statements, knowing they were prepared for  
21 the investors' review.

22 **Third**, the facts sought by the Trustee regarding the Auditor Letters are probative of  
23 Nixon's actual knowledge, intentional breach of fiduciary duty, and assistance of Carpoff's breach  
24 of his fiduciary duty. For example, per **Exhibit 4**, [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27 [REDACTED] The Trustee is entitled to discover: (1) the  
28 evolution of this situation; (2) how Nixon's failure to respond to the 2015 Auditor Letter made the  
[REDACTED] and (3) how much [REDACTED] Nixon failed to

1 respond to the 2016 Auditor Letter. [REDACTED]

2 [REDACTED] and stood by: the Trustee is entitled to know why.

3 *See generally, e.g., Seaman v. Sedgwick LLP*, 2013 WL 12204741, \*6 (C.D. Cal. July 8,  
4 2013) (“This substantial assistance can be in the form of inaction where a defendant owes a  
5 fiduciary duty directly to a plaintiff.”); *Minch v. California Highway Patrol*, 140 Cal. App. 4th  
6 895, 898 & 907 (Cal. 2006) (internal policy manual is admissible evidence on the question of  
7 breach of duty); *California Fed. Bank v. B&H Custom Window & Door, Inc.*, 2005 WL 2789280,  
8 \*11 (Cal. Ct. App. Oct. 27, 2005) (“Evidence that the person ‘must have known’ the fact, in the  
9 face of a false exculpatory statement, can prove the fact of actual knowledge circumstantially.”);  
10 *Tavernier v. Maes*, 242 Cal. App. 2d 532, 540 (Ct. App. 1966) (“[A]ctual knowledge may be  
11 established by circumstantial evidence from which the knowledge of the fact in question can be  
12 reasonably inferred.”) (citing cases).

13 *See also, generally*, Restatement (Third) of the Law Governing Lawyers § 95 (2000)  
14 (comment f) (a lawyer’s failure to properly respond to an auditor’s letter is a breach of the lawyer’s  
15 duty of care to the client).

## 16 **V. THE INTERROGATORY AND INTERROGATORY RESPONSE**

17 No where in Nixon’s document production is there a response to DC Solar’s 2015 and 2016  
18 Auditor Letters. The Trustee’s Interrogatory seeks to find out why. The Trustee sought a detailed  
19 explanation of Nixon’s receipt, review, consideration, and response of the three Auditor Letters  
20 and the surrounding facts and circumstances.

21 Nixon’s Interrogatory Response is severely deficient. Nixon is **evasive**. For example,  
22 Nixon implies but refuses to admit outright that it failed to respond to the 2015 and 2016 Auditor  
23 Letters, presumably because that would be a concession it [REDACTED] and  
24 concealed relevant financial information from DC Solar’s Auditor (and the investors). Moreover,  
25 Nixon **refuses to fully answer the query**. For example, Nixon refuses to explain **why** it failed to  
26 respond to the 2015 and 2016 Auditor Letters. And Nixon refuses to state whether and how  
27 Nixon’s failure to respond complies / violates Nixon’s Internal Policies.

28 The Trustee’s Interrogatory asks:

1. Identify and describe all material facts related to your receipt of, consideration of, and any response to, each of the Auditor Letters, including but not limited to:
  - a. Whether and, if so, when you received the Auditor Letters.
  - b. Your policies and procedures related to letters from auditors of clients, such as the Auditor Letters.
  - c. Whether and, if so, when and how, you complied (or did not comply) with all your policies and procedures related to the Auditor Letters.
  - d. All actions you took upon receipt of the Auditor Letters, including but not limited to all items and issues you considered in determining whether to respond and how to respond and what to include or not include in your response.
  - e. Whether you responded and, if so, how, and if not, why not.

The Auditor Letters (2015, 2016, and 2017) are exhibits to the Trustee's Interrogatory. **Exhibit 2.**

Nixon's wordy Interrogatory Response is evasive and incomplete. Nixon answers: Nixon Peabody objects to this Interrogatory as overly broad, vague, ambiguous, unduly burdensome, and neither relevant nor reasonably calculated to lead to the discovery of relevant evidence to the extent it seeks "all material facts," "all your policies and procedures," "all actions," and "all items and issues." Nixon Peabody also objects to this Interrogatory to the extent **it seeks privileged communications between Nixon Peabody and its counsel, including its Audit Letters personnel** who report to the General Counsel. Nixon Peabody objects because this incorrectly numbered Interrogatory contains five discrete subparts, in reference to three different requests for a response to an Auditor Letter, and is therefore compound. (Indeed, based on the way the Trustee counts interrogatories, this Interrogatory counts as fifteen separate requests.) Nixon Peabody further objects to this Interrogatory to the extent that the information sought is equally within DC Solar's and the Trustee's possession, and objects to the extent the Interrogatory purports to impose on Nixon Peabody burdens that are greater than what is required by the applicable discovery rules.

Without waiving any of the objections stated above, but specifically subject to them, Nixon Peabody responds to this Interrogatory as follows:

Nixon Peabody received the Auditor Letter dated August 19, 2015 no later than September 2, 2015. Nixon Peabody drafted a response to the August 19, 2015 Auditor Letter that was dated September 2, 2015. The September 2, 2015 draft was addressed to Montage Services Inc., at 281 Ellis Street, San Francisco, CA 94102, and was to be sent by fax and first class mail. The September 2, 2015 draft copied "Jeff Carpoff, President & CEO."

**Discussions regarding the August 19, 2015 Auditor Letter occurred between September 2, 2015 and January 11, 2016.** The August 19, 2015 Auditor Letter



1 was discussed between and among at least the following individuals at Nixon  
2 Peabody: Christina Scardino, James Duffy, Richard Cogen, Forrest Milder,  
3 Stephanie Rallo, and Brian Fitzpatrick. **In the course of those discussions, Nixon**  
4 **Peabody discussed whether there were any potential liabilities that they were**  
5 **aware of that they would need to disclose in their response.** The Nixon Peabody  
6 attorneys working on the DC Solar engagement **reviewed transaction documents**  
7 **and consulted members of Nixon Peabody's Audit Letters department,** a  
8 division of the General Counsel's office, in connection with those discussions.  
9 **These communications with the Audit Letters department contain requests for**  
10 **or provision of legal advice and are privileged.**

11 Nixon Peabody authored a **draft response** to the August 19, 2015 Auditor Letter  
12 and circulated it among at least the following individuals, who were either senders,  
13 recipients, or individuals copied on emails attaching drafts: Christina Scardino,  
14 James Duffy, Richard Cogen, Forrest Milder, Deborah Bouchey, Ginny Johnson,  
15 and Stephanie Rallo. In the draft response, Nixon Peabody stated that Nixon  
16 Peabody was "not, as of the Fiscal Year End or the Effective Date, engaged to give  
17 substantive attention to, or represent the Client in connection with, loss  
18 contingencies coming within the scope of clause (a) of Paragraph 5 of the American  
19 Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors'  
20 Requests for Information (December 1975)." The Fiscal Year End listed was  
21 December 31, 2014, which is the date specified in the client's August 19, 2015  
22 letter. The Effective Date listed was November 2, 2015. Nixon Peabody attached  
23 the American Bar Association Statement **to its response.** Nixon Peabody also  
24 stated that DC Solar was "indebted [to Nixon Peabody] for services and expenses  
25 in the amount of \$33,909.00, and had accumulated approximately \$2,936.50 in  
26 unbilled fees for services and expenses."

27 Nixon Peabody received the Auditor Letter dated July 11, 2016 on July 18, 2016.  
28 Nixon Peabody **drafted a response** to the July 11, 2016 Auditor Letter that was  
dated July 20, 2016. The July 20, 2016 draft was addressed to Montage Services  
Inc., at 281 Ellis Street, San Francisco, CA 94102, and was to be sent by fax and  
first class mail. The July 20, 2016 **draft** copied "Jeff Carpoff, President & CEO."

**Discussions regarding the July 11, 2016 Auditor Letter occurred between July**  
22 **20, 2016 and October 24, 2016.** The July 11, 2016 Auditor Letter was discussed  
23 between and among at least the following individuals at Nixon Peabody: Lisa  
24 Bryning, James Duffy, Richard Cogen, and Forrest Milder. Nixon Peabody  
25 discussed **whether there were any potential liabilities that they were aware of**  
26 **that they would need to disclose in their response. The Nixon Peabody**  
27 **attorneys working on the DC Solar engagement reviewed transaction**  
28 **documents and consulted with DC Solar's outside counsel, Ari Lauer,**  
**regarding these issues.** They also consulted members of Nixon Peabody's Audit  
Letters department, a division of the General Counsel's office, in connection with  
those discussions. **These communications with the Audit Letters department**  
**contain requests for or provision of legal advice and are privileged.**



1  
2 Nixon Peabody authored a **draft response** to the July 11, 2016 Auditor Letter and  
3 circulated it among at least the following individuals, who were either senders,  
4 recipients, or individuals copied on emails attaching drafts: Lisa Bryning, James  
5 Duffy, Richard Cogen, Forrest Milder, Deborah Bouchey, Ginny Johnson, Laura  
6 Quant, and Stephanie Rallo. In the **draft response**, Nixon Peabody stated that  
7 Nixon Peabody was “not, as of the Fiscal Year End or the Effective Date, engaged  
8 to give substantive attention to, or represent the Client in connection with, loss  
9 contingencies coming within the scope of clause (a) of Paragraph 5 of the American  
10 Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’  
11 Requests for Information (December 1975).” The Fiscal Year End listed was  
12 December 31, 2015, which is the date specified in the client’s July 11, 2016 letter.  
13 The Effective Date listed was July 20, 2016. Nixon Peabody attached the American  
14 Bar Association Statement **to its response**. Nixon Peabody also **stated** that DC  
15 Solar was “indebted [to Nixon Peabody] for services and expenses in the amount  
16 of \$175,451.50, and had accumulated approximately \$14,097.00 in unbilled fees  
17 for services and expenses.”

18 Nixon Peabody received the Auditor Letter dated August 28, 2017 no later than  
19 September 22, 2017. **Nixon Peabody responded to the August 28, 2017 Auditor  
20 Letter in a letter dated September 22, 2017.** The September 22, 2017 letter was  
21 addressed to Montage Services Inc., at 281 Ellis Street, San Francisco, CA 94102,  
22 and sent by fax and first class mail. The September 22, 2017 letter copied “Jeff  
23 Carpoﬀ, President & CEO.” The September 22, 2017 letter was signed and placed  
24 in the mail on September 25, 2017 by Deborah Bouchey on behalf of Richard  
25 Cogen.

26 **Discussions regarding August 28, 2017 Auditor Letter occurred between as  
27 early as September 8, 2017 and September 25, 2017.** The August 28, 2017  
28 Auditor Letter was discussed between and among at least the following individuals  
at Nixon Peabody: Lisa Bryning, Deborah Bouchey, Richard Cogen, James Duffy,  
Forrest Milder, and Joseph Brady. **Nixon Peabody discussed whether there were  
any potential liabilities that they were aware of that they would need to disclose  
in their response. The Nixon Peabody attorneys working on the DC Solar  
engagement reviewed transaction documents and consulted with DC Solar’s  
outside counsel, Ari Lauer, regarding these issues.** They also consulted members  
of Nixon Peabody’s Audit Letters department, a division of the General Counsel’s  
office, in connection with those discussions. These communications with the Audit  
Letters department contain requests for or provision of legal advice and are  
privileged.

29 Nixon Peabody authored **the response** to the August 28, 2017 Auditor Letter and  
30 circulated it among at least the following individuals, who were either senders,  
recipients, or individuals copied on emails attaching drafts: Lisa Bryning, James  
Duffy, Richard Cogen, Forrest Milder, Deborah Bouchey, and Ginny Johnson. **In  
the response**, Nixon Peabody stated that Nixon Peabody was “not, as of the Fiscal

1 Year End or the Effective Date, engaged to give substantive attention to, or  
 2 represent the Client in connection with, loss contingencies coming within the scope  
 3 of clause (a) of Paragraph 5 of the American Bar Association Statement of Policy  
 4 Regarding Lawyers' Responses to Auditors' Requests for Information (December  
 5 1975)." The Fiscal Year End listed was December 31, 2016, which is the date  
 6 specified in the client's August 28, 2017 letter. The Effective Date listed was  
 7 September 22, 2017. Nixon Peabody attached the American Bar Association  
 8 Statement to its response. Nixon Peabody also stated that DC Solar was "indebted  
 9 [to Nixon Peabody] for services and expenses in the amount of \$78,463.50, and had  
 10 accumulated approximately \$41,932.50 in unbilled fees for services and expenses."

11 Nixon Peabody will produce its written policy regarding letters from auditors of  
 12 clients, which has been in effect since September 1, 2007. The policy provides  
 13 guidance on whether and how to disclose matters in response to auditors' requests.  
 14 **Nixon Peabody followed the policy's guidance when considering whether and  
 15 how to disclose matters in response to the Auditor Letters.**

16 (emphasis added).

17 The bolded portions of the Interrogatory Response show:

18 (1) Nixon at times describes a "draft response" and at other times Nixon describes a  
 19 "response" to the 2015 and 2016 Auditor Letters. **Evasively**, Nixon never clearly states that in fact  
 20 it did not respond to the 2015 and 2016 Auditor Letters.

21 Nixon must answer directly. Did Nixon respond? If not, why not? What did Nixon consider  
 22 ("potential liabilities" are identified) and what were the surrounding circumstances?

23 (2) In connection with the 2016 and 2017 Auditor Letters, Nixon states that it  
 24 "reviewed transaction documents and consulted with DC Solar's outside counsel, Ari Lauer,  
 25 regarding [potential liabilities that they were aware of that they would need to disclose in their  
 26 response]." But Nixon fails to identify (a) those transaction documents and why Nixon reviewed  
 27 them; (b) the "potential liabilities;" (c) what Nixon discussed with Mr. Lauer, why it did so, and  
 28 why Nixon kept other DC Solar employees out of those discussions; and (d) how and why the  
 2016 discussions led to or justified Nixon's failure to respond.

Mr. Lauer is a criminal defendant in *U.S.A. v. Lauer*, Case No. 23-00261 (E.D. Ca.), a civil  
 defendant in *Sec. & Exch. Comm. v. Lauer*, Case No. 22-1726 (E.D. Ca.), and has invoked the 5<sup>th</sup>  
 Amendment in other DC Solar-related litigation. Because Mr. Lauer is not expected to testify in  
 this Adversary, Nixon's sworn testimony (and the documents, some of which are subject to this  
 Court's privilege review and matters under advisement) are the primary (if not only) source of this  
 information.

1 (3) Nixon states that it “*followed*” its [REDACTED] (**Exhibit 5**)  
 2 when “*considering whether and how to disclose matters in response.*” But Nixon refuses to  
 3 explain how this can be since Nixon **never responded** to the 2015 and 2016 Auditor Letters.  
 4 Nixon’s [REDACTED] in **Exhibit 4**. They knew there  
 5 was a big problem.

6 All of this and more was requested in the Trustee’s Interrogatory.

7 After the parties’ September 26<sup>th</sup> telephonic meet and confer, and as Nixon agreed on that  
 8 call, Nixon provided the October 2<sup>nd</sup> email (**Exhibit 1**) which states:

9 I’m writing to follow up on your questions during our meet-and-confer last  
 10 Tuesday, 9/26 regarding Nixon’s verified responses to the Trustee’s Fourth Set of  
 11 Interrogatories. Based on our investigation to date, we do not believe Nixon sent a  
 12 response to the 2015 Auditor Letter. We are continuing a reasonable and diligent  
 13 search for the final response to the 2016 Auditor Letter. The reasons that a final  
 14 response was sent or not sent are protected by attorney-client privilege.

15 This is inadequate. Neither this unverified supplement nor the parties’ subsequent meet-and-  
 16 conferral properly answers the Trustee’s Interrogatory. **First**, Nixon’s counsel’s unverified email  
 17 statement that “we do not believe Nixon sent a response to the 2015 Auditor Letter” is very  
 18 different than admissible evidence at trial that in fact “Nixon did not respond ...,” which Nixon  
 19 continues to refuse to admit. And “we” seems to refer to the Keker firm, not Nixon. Nixon needs  
 20 to answer (clearly), not its counsel.

21 **Second**, Nixon refuses to acknowledge that it did not respond to the 2016 Auditor Letter  
 22 either. “[W]e are still looking” (whoever “we” is) is not an acceptable answer to an interrogatory.  
 23 And it is a continuation of Nixon’s practice of refusing to verify interrogatory responses unless  
 24 pressed by the Trustee. Only recently has Nixon agreed to verify **any** of its responses to **any** of the  
 25 Trustee’s interrogatories.

26 **Third**, Nixon repeats its improper refusal to provide a complete response to the  
 27 Interrogatory, stating that “[t]he reasons that a final response was sent or not sent are protected by  
 28 attorney-client privilege.” Nixon continues to employ sharp tactics in its communications, stating  
 that “we will provide non-privileged information,” without stating whether such information even  
 exists.

**Fourth**, Nixon does not explain how its so-called belie[f] that it did not respond to the

2015 Auditor Letter, which it internally described as a [REDACTED] or any of its other responses / non-responses, complied with / violated Nixon Internal Policies.

### VI. LEGAL STANDARD

F.R.C.P. 33(b)(3) obligates Nixon to answer the Trustee's Interrogatory "fully." *See also Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013) (parties must respond "to the fullest extent possible"). Nixon has "an obligation to conduct a reasonable inquiry into the factual basis of its discovery responses" before providing its interrogatory responses.<sup>4</sup>

Additionally, Nixon's responses may not be "misleading or evasive."<sup>5</sup> "[I]nterrogatories should be answered directly and without evasion in accordance with information that the answering party possesses after due inquiry."<sup>6</sup> "A discovering party may seek relief from the Court with respect to interrogatory responses that are 'evasive or incomplete.'"<sup>7</sup>

Where, as here, interrogatory answers are "inadequate, the interrogating party may move under Rule 37(a) for an order compelling adequate answers."<sup>8</sup>

### VII. ARGUMENT

#### 1. Nixon's Responses (or Non-Responses) to DC Solar's Three Auditor Letters Is Very Important Evidence

The Trustee's claims are largely for intentional tort. Nixon had "actual knowledge" of Carpoft's wrongdoing, violated its fiduciary duties to client-DC Solar, and knowingly assisted Carpoft in breaching his fiduciary duties, thereby harming DC Solar.

The Trustee's evidence is compelling, including Nixon lying to investors about DC Solar's liabilities. Now, the Trustee has identified that Nixon misled DC Solar's Auditor by concealing known liabilities in violation of (1) DC Solar's direction to disclose; and (2) Nixon's [REDACTED]

[REDACTED]. Nixon (Exhibit 4) [REDACTED]. Nixon apparently sent no response to the 2015 and 2016 Auditor Letters, and discussed but never fixed these failures. Rather, Nixon hoped no one would notice.

<sup>4</sup> *Nat'l Acad. of Recording Arts & Scis., Inc. v. On Point Events, LP*, 256 F.R.D. 678, 680 (C.D. Cal. 2009); *see also Shaw v. Davis*, 2021 WL 3889980, \*6 (D. Nev. Aug. 31, 2021).

<sup>5</sup> *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 929 (1st Cir. 1988).

<sup>6</sup> *Murrey v. City of Los Angeles*, 2020 WL 2065019, \*5 (C.D. Cal. Feb. 21, 2020).

<sup>7</sup> *V5 Techs. v. Switch, Ltd.*, 334 F.R.D. 297, 305 (D. Nev. 2019).

<sup>8</sup> F.R.C.P. 33, cmt. 1970 Amendment Subdivision (a), incorporated by F.R.B.P. 7037.

1 The buck stops with Mr. Milder. Mr. Milder chose to conceal DC Solar's liabilities from  
 2 DC Solar's Auditor, just like he concealed this and other information from investors in his opinion  
 3 letters. Mr. Milder did so to induce investments and close transactions, all of which harmed DC  
 4 Solar. The discovery by [REDACTED], their refusal to take  
 5 action, the ramifications of Nixon's conflict of interest, and Nixon's abandonment of its duties to  
 6 its client (DC Solar) in favor of Carpoﬀ (its client's insider), are all powerful evidence to be  
 7 considered by the trier of fact.

## 8 **2. Nixon's Interrogatory Response is Deficient.**

9 Nixon's Interrogatory Response is evasive and incomplete. Nixon uses a lot of words and  
 10 doubletalk to distract from its refusal to directly answer the Trustee's query. Some examples  
 11 follow.

12 Nixon does not state whether it in fact did or did not respond to the 2015 and 2016 Auditor  
 13 Letters. An implication that Nixon did not respond is insufficient. In an unverified email  
 14 supplement, Nixon claims an inadequate "belie[f]" that it did not respond, and that it purportedly  
 15 is still looking around. Query where is Nixon looking. This is inadequate. Nixon is / was a  
 16 defendant in the LA Case since 2019 and a defendant in this Adversary since 2021. Rather than  
 17 answering the Trustee's question as required, Nixon continues its tactics of evasion,  
 18 gamesmanship, and delay. Nixon's goal is to deprive the Trustee of important discoverable  
 19 information and avoid conceding that it violated its policies.

20 Nixon must also describe the surrounding circumstances, including **why** it failed to respond  
 21 to the 2015 and 2016 Auditor Letters in violation of its [REDACTED] in its efforts to serve Mr.  
 22 Carpoﬀ (but not DC Solar), what it reviewed, what it considered (*e.g.*, "potential liabilities"), and  
 23 what it communicated with Mr. Lauer (as examples). Nixon does not appear to contend that this  
 24 information is privileged, nor can it. Nixon must provide a fulsome answer.

25 Nixon does not explain how it was able to swear under oath that it followed its [REDACTED]  
 26 [REDACTED] (**Exhibit 3**)  
 27 when **it failed to respond to the 2015 and 2016 Auditor Letters**, a direct violation of the letter  
 28 and spirit of the [REDACTED], particularly given its view that the situation [REDACTED]  
 [REDACTED]. **Exhibit 4.**

The Trustee cannot provide the Court with all the items Nixon failed to include in its Interrogatory Response, given that this information is in Nixon's possession and the burden to

1 “fully” and non-evasively respond is on Nixon as the responding party. But clearly, Nixon has  
 2 failed to adequately respond in order to deprive the Trustee of admissible evidence of Nixon’s  
 3 wrongdoing.

### 4 **3. Nixon’s Gamesmanship and Delay Should be Rejected**

5 Nixon has boasted that it is the “*most aggressive litigant*” believing that unprofessional and  
 6 sharp tactics work. A continuation of this practice is to avoid admitting the truth where it would  
 7 compromise its positions. For example: (1) Nixon previously described the contents of a document

8 [REDACTED]

9 [REDACTED] (2) Nixon previously claimed [REDACTED]

10 [REDACTED];

11 and (3) Nixon refuses to admit that Nixon’s own allegations made under Rule 11 in another  
 12 litigation matter are, in fact, true. [ECF Nos. 304, 342, 296, & 340]. Nixon pretends not to  
 13 understand basic vocabulary such as the meaning of the word “important,” claiming that word is  
 14 “ambiguous,” and “could have multiple meanings.” [E.g., ECF No. 296]. And yet, Nixon’s [REDACTED]

15 Here, the Trustee submits that Nixon **knows** it did not respond to the 2015 and 2016  
 16 Auditor Letters, and refuses to say so. And Nixon **knows** this violated its Internal [REDACTED]  
 17 [REDACTED] but refuses to say so. Nixon’s refusal to answer such basic questions appear to be  
 18 a harbinger of what the Trustee may expect when she deposes Messrs. Milder, Brady, Cogen, and  
 19 Duffy. No doubt the Trustee will face evasive non-answers followed by a litany of coaching /  
 20 speaking objections such as “don’t speculate,” “asked and answered,” and “move on counsel.”

21 Nixon must be held to the Rules. Its litigation conduct should not be permitted.

### 22 **4. Nixon’s Claim of Privilege Should be Rejected.**

23 Nixon claims in its Interrogatory Response that its “communications with the Audit Letters  
 24 department contain requests for or provision of legal advice and are privileged.” Nixon also claims  
 25 that “[t]he reasons that a final response was sent or not sent are protected by attorney-client  
 26 privilege.” Nixon’s claim of privilege to conceal important evidence of its wrongdoing should be  
 27 rejected.

28 **First**, even if Nixon could assert the attorney-client privilege between itself (as client) and  
 itself (as lawyer) in these circumstances, and it cannot, Nixon appears to acknowledge in its crafty



1 drafting that not all its communications with its “Audit Letters department” are privileged. Rather,  
 2 Nixon writes in its Interrogatory Response that its communications “... contain requests for ...”  
 3 legal advice. Query which ones do and which ones do not. The ones that do not are unquestionably  
 4 not privileged.

5 Nixon should be directed to answer the Interrogatory by providing all information that is  
 6 not a request for legal advice (and otherwise does not satisfy the basic elements of the attorney-  
 7 client privilege).

8 **Second**, the Trustee (under seal) filed her (i) motion to compel and for an order denying  
 9 claw-back (“***First Motion to Compel***”) [ECF No. 282]; and (ii) motion to compel Nixon Peabody  
 10 LLP to (1) Produce Non-Privileged Responsive Documents; and (2) Submit Documents for in  
 11 Camera Review (“***Second Motion to Compel***”) [ECF No. 304], and together with the First Motion  
 12 to Compel, the “***Motions to Compel***”). The Motions to Compel, along with the briefing and oral  
 13 argument, address multiple reasons why Nixon’s claim of attorney-client privilege over these items  
 14 is without merit. Given that the Motions to Compel have been briefed and argued, and this Court  
 15 has taken them under advisement, the Trustee does not repeat those arguments in full here.

16 Rather, the Trustee briefly re-states one portion of her argument, that

17 (i) The Federal rules of privilege apply;<sup>9</sup>

18 (ii) Nixon has the burden to demonstrate that the privilege applies in these  
 19 circumstances, which is to be narrowly and strictly constructed;<sup>10</sup> and

20 (iii) Nixon cannot assert the privilege against its then-“current client,” DC Solar; this is  
 21 also known as the “fiduciary exception” to the attorney-client privilege.<sup>11</sup>

22 As to this final point, **Nixon was DC Solar’s lawyer** and would be breaching its fiduciary  
 23 duties to DC Solar (such as of loyalty and disclosure) if it could claim as attorney-client privileged  
 24 the reasons it concealed DC Solar’s liabilities from DC Solar’s Auditor. Nixon may not act  
 25 adversely to its current client (DC Solar) because it decided to speak with its law firm colleagues.

26 <sup>9</sup> The Trustee has asserted claims against Nixon under state and federal law, and the items at issue  
 27 are relevant to both; thus, the federal rules of evidence apply. *Agster v. Maricopa County*, 22 F.3d  
 28 836, 839 (9th Cir. 2005); *In re Ginzburg*, 517 B.R. 175, 182 (Bankr. C.D. Cal. 2014).

<sup>10</sup> *In re Pacific Pictures Corp.*, 679 F.3d 1121 (9th Cir. 2012); *Regents of Univ. of California v. Affymetrix, Inc.*, 326 F.R.D. 275, 278 (S.D. Cal. 2018).

<sup>11</sup> “Where conflicting duties exist, the law firm’s right to claim privilege must give way to the  
 interest in protecting current clients who may be harmed by the conflict.” *In re Sonic Blue, Inc.*,  
 2008 WL 170562, \*9 (Bankr. N.D. Cal Jan. 18, 2007)



Moreover, to establish that these communications are in fact privileged from DC Solar, Nixon must be required to provide an affidavit of a Nixon representative attesting that “Individual X” served as the “client representative” and that “Individual X” sought advice from “Individual Y” in an attorney-client capacity. Nixon makes no such effort, presumably because any such witness would be subject to questioning and cross examination.

**Third**, Nixon performed this work at DC Solar’s request and direction (per DC Solar’s three Auditor Letters) and for DC Solar’s benefit (the audit of three years of its financial statements). Thus, it cannot have been done for the purposes of Nixon’s own legal advice to itself (Nixon as the client and the lawyer), which is the basic, fundamental, and essential requirement of the attorney client privilege. Nixon cannot keep documents, communications, and information conducted *for* DC Solar’s (its client’s) benefit privileged *from* DC Solar.

**Fourth**, the Trustee presents an additional argument, which it did not present in its Motions to Compel as Nixon had not yet produced the necessary material.

Per Nixon’s Interrogatory Response, Nixon has only now produced its [REDACTED]

[REDACTED] (**Exhibit 5**). Therein, Nixon’s [REDACTED]:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The Trustee presents certain examples of Nixon’s bills to DC Solar (**Composite Exhibit 6**), to show that Nixon charged DC Solar [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] – demonstrate that Nixon’s conduct related to the Auditor Letters **was part of its representation of DC Solar** and therefore

1 could never be attorney client privileged within the firm (Nixon as the client and Nixon as the  
2 lawyer) and confidential from client-DC Solar.

3 Nixon's claim of attorney client privilege (with itself) should be rejected.

4 **5. Nixon's Other Objections are Boilerplate and Should be Rejected.**

5 Nixon's boilerplate objections should be rejected.<sup>12</sup> For example, Nixon objects to the  
6 Trustee's Interrogatory "as overly broad, vague, ambiguous, unduly burdensome, and neither  
7 relevant nor reasonably calculated to lead to the discovery of relevant evidence." Aside for being  
8 boilerplate with no support or specificity, it is untrue.

9 Nixon concealed information from, misled, and/or lied to DC Solar's Auditor. Nixon  
10 appears to have violated its [REDACTED] in responding to DC Solar's  
11 direction to provide its Auditor essential information. And Nixon internally described its own  
12 failure to respond to the 2015 Auditor Letter as follows:



13  
14  
15  
16  
17  
18  
19 **Exhibit 4** (emphasis added).

20 Nixon must be compelled to provide a fulsome and complete response to the Trustee's  
21 Interrogatory. Nixon's objections should all be rejected.

22 **VIII. CONCLUSION**

23 Respectfully, this Court should order Nixon to provide a fulsome and complete response  
24 to the Trustee's Interrogatory, and all other relief this Court deems just and proper. Nixon's  
25 Interrogatory Response is deficient, evasive, and incomplete.

26 Dated: October 11, 2023.

**HARTMAN & HARTMAN**

27  
28 <sup>12</sup> *Alfaro v. City of San Diego*, 2018 WL 4562240, \*1 (S.D. Cal. Sept. 21, 2018) (citing cases).

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28

/s/ Jeffrey L. Hartman  
Jeffrey L. Hartman, Esq.  
*Attorney for Plaintiff Christina W. Lovato*

**MELAND BUDWICK, P.A.**

/s/ Michael S. Budwick  
Michael S. Budwick, Esq.  
Solomon B. Genet, Esq.  
Meaghan E. Murphy, Esq.  
Gil Ben-Ezra, Esq.  
Alexander E. Brody, Esq.  
*Attorneys for Plaintiff Christina W. Lovato*

**CERTIFICATE OF SERVICE**

I certify that on September 27, 2023, I caused to be served the following document(s):

**TRUSTEE'S MOTION TO COMPEL BETTER RESPONSS TO  
TRUSTEE'S FOURTH SET OF INTERROGATORIES**

I caused to be served the above-named document(s) as indicated below:

✓ a. Via ECF to:

ALEXANDER E. BRODY [abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)  
[ltannenbaum@melandbudwick.com](mailto:ltannenbaum@melandbudwick.com) [ltannenbaum@ecf.courtdrive.com](mailto:ltannenbaum@ecf.courtdrive.com)  
[mrbnefs@yahoo.com](mailto:mrbnefs@yahoo.com)  
LOUIS M BUBALA [lbubala@kcnvlaw.com](mailto:lbubala@kcnvlaw.com) [cdroessler@kcnvlaw.com](mailto:cdroessler@kcnvlaw.com)  
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CHRISTINA W. LOVATO [trusteelovato@att.net](mailto:trusteelovato@att.net) [NV26@ecfcbis.com](mailto:NV26@ecfcbis.com)  
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[efiling@keker.com](mailto:efiling@keker.com)

✓ b. Direct Email to:

Elliot R. Peters, Esq. at [epeters@keker.com](mailto:epeters@keker.com)  
Distribution List at [npsolar@keker.com](mailto:npsolar@keker.com)

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 11, 2023.

/s/ Solomon B. Genet  
Solomon B. Genet, Esq.

## **EXHIBIT 1**

**From:** [Sol Genet](#)  
**To:** ["Ben D. Rothstein"](#); [Paul von Autenried](#)  
**Cc:** [Michael Budwick](#); [Gil Ben-Ezra](#); [Meaghan Murphy](#); [Alex Brody](#); [NPSOLAR](#)  
**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs  
**Date:** Tuesday, October 3, 2023 5:40:05 PM  
**Attachments:** [image001.png](#)

---

Ben:

It was good speaking with you as well.

As I communicated on our call, the Trustee's position is that Nixon's response is inadequate. The threshold request in the rog is whether Nixon provided a response to the audit letters, and still Nixon has provided no definite answer. I do not agree with you that this is a difficult ask. Also, last week I did not ask you to go "a step further," but simply sought to obtain a complete response to the interrogatory.

As to the question of "why" Nixon did not send responses, the Trustee's position is that the a-c privilege cannot protect this information from DC Solar, Nixon's then-client. I recognize that we disagree, including from the parties' previous positions in the motions to compel.

Of course, the Trustee will review any Nixon supplement upon receipt.

Thanks,  
Sol

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**From:** Ben D. Rothstein <BRothstein@keker.com>  
**Sent:** Tuesday, October 3, 2023 5:09 PM  
**To:** Sol Genet <sgenet@melandbudwick.com>; Paul von Autenried <PvonAutenried@keker.com>  
**Cc:** Michael Budwick <mbudwick@melandbudwick.com>; Gil Ben-Ezra <gbenezra@melandbudwick.com>; Meaghan Murphy <mmurphy@melandbudwick.com>; Alex Brody <abrody@melandbudwick.com>; NPSOLAR <NPSOLAR@keker.com>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

**EXTERNAL EMAIL:**

Sol,

We appreciate your time just on the phone now.

As I mentioned on the call, we are not aware of Nixon sending a formal response to the auditor letters from 2015 and 2016, based on our search efforts to date. On the meet and confer last week, you asked us, essentially, to go a step further than that and affirm that no responses ever went out to those two letters. There are inherent difficulties in affirming a negative proposition like that, given that the events at issue took place 7-8 years ago. But we are exhausting all potential avenues, and we will supplement our responses to answer the question of whether we sent responses to the 2015 and 2016 letters with as much certainty as possible.

On the question of why we did not send responses, we will provide non-privileged information that addresses this question in our supplemental response.

Thanks,

Ben

---

**Benjamin D. Rothstein**

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633 Battery Street

San Francisco, CA 94111-1809

415 773 6666 direct | 415 391 5400 main

[brothstein@keker.com](mailto:brothstein@keker.com) | [vcard](#) | [keker.com](http://keker.com)

Pronouns: he/him/his

---

**From:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>

**Sent:** Tuesday, October 3, 2023 4:32 AM

**To:** Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Cc:** Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Gil Ben-Ezra <[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>; NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

**[EXTERNAL]**

---

Hi Paul.



I will circulate dial in information for 430 pm ET / 130 pm PT today (Tuesday).

Thanks,  
Sol

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**From:** Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Sent:** Monday, October 2, 2023 7:05 PM

**To:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>

**Cc:** Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Gil Ben-Ezra  
<[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Alex  
Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>; NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

### EXTERNAL EMAIL:

Hi Sol,

We're available to confer tomorrow after 1pm PT / 4pm ET. Please let me know what time after 1pm PT works for you.

Thanks,  
Paul

---

**Paul von Autenried**  
Keker, Van Nest & Peters LLP  
633 Battery Street  
San Francisco, CA 94111-1809  
415 676 2296 direct | 415 391 5400 main  
[pvonautenried@keker.com](mailto:pvonautenried@keker.com) | [keker.com](http://keker.com)  
*pronouns: he/him/his*

---

**From:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>  
**Sent:** Monday, October 2, 2023 2:59 PM  
**To:** Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>  
**Cc:** Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Gil Ben-Ezra <[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>; NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>  
**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

**[EXTERNAL]**

---

Hi Paul –

I just tried you and didn't get an answer. Can we speak tomorrow at 12 pm ET?

Thanks,  
Sol

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**From:** Sol Genet  
**Sent:** Monday, October 2, 2023 5:56 PM  
**To:** 'Paul von Autenried' <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>  
**Cc:** Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Gil Ben-Ezra <[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>; NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>  
**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

Paul –  
I hope all is well.

This response is inadequate. I am going to call you now.

Thanks,

-Sol

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**From:** Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Sent:** Monday, October 2, 2023 5:46 PM

**To:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>

**Cc:** Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Gil Ben-Ezra  
<[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Alex  
Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>; NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

### EXTERNAL EMAIL:

Hi Sol,

I'm writing to follow up on your questions during our meet-and-confer last Tuesday, 9/26 regarding Nixon's verified responses to the Trustee's Fourth Set of Interrogatories. Based on our investigation to date, we do not believe Nixon sent a response to the 2015 Auditor Letter. We are continuing a reasonable and diligent search for the final response to the 2016 Auditor Letter. The reasons that a final response was sent or not sent are protected by attorney-client privilege.

Thanks,  
Paul

---

**Paul von Autenried**  
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[pvonautenried@keker.com](mailto:pvonautenried@keker.com) | [keker.com](http://keker.com)  
*pronouns: he/him/his*

---

**From:** Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Sent:** Friday, September 22, 2023 10:07 AM

**To:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>; Christine Zaleski <[CZaleski@keker.com](mailto:CZaleski@keker.com)>; Laresa Brown <[LBrown@keker.com](mailto:LBrown@keker.com)>; Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Gil Ben-Ezra <[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>

**Cc:** NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

Hi Sol,

Hope you are well. We are available at 2:30pm PST/5:30pm EST on Tuesday, 9/26. Please circulate a dial-in.

Thanks,  
Paul

---

**Paul von Autenried**

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*pronouns: he/him/his*

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**From:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>

**Sent:** Friday, September 22, 2023 5:45 AM

**To:** Christine Zaleski <[CZaleski@keker.com](mailto:CZaleski@keker.com)>; Laresa Brown <[LBrown@keker.com](mailto:LBrown@keker.com)>; Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Gil Ben-Ezra <[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>

**Cc:** NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>; Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

**[EXTERNAL]**

---

Hi Christine:  
Hope all is well.

Can we have a call to confer on these responses on Tuesday at 530 pm ET or Wed at 3 pm ET?

Thanks,  
Sol

SOLOMON GENET



MELAND | BUDWICK

3200 Southeast Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131

305-358-6363

[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)

[www.melandbudwick.com](http://www.melandbudwick.com)

Download [Vcard](#)

---

**From:** Christine Zaleski <[CZaleski@keker.com](mailto:CZaleski@keker.com)>

**Sent:** Thursday, September 21, 2023 2:54 PM

**To:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>; Laresa Brown <[LBrown@keker.com](mailto:LBrown@keker.com)>; Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Gil Ben-Ezra <[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>

**Cc:** NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>; Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

**EXTERNAL EMAIL:**

Hi Sol,

We have agreed to verify the response and working on getting it to you as soon as possible.

Regards,  
Christine

---

**Christine Zaleski**

Keker, Van Nest & Peters LLP

633 Battery Street

San Francisco, CA 94111-1809

415 773 6693 direct | 415 391 5400 main

[czaleski@keker.com](mailto:czaleski@keker.com) | [vcard](#) | [keker.com](http://keker.com)

---

**From:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>

**Sent:** Thursday, September 21, 2023 6:21 AM

**To:** Christine Zaleski <[CZaleski@keker.com](mailto:CZaleski@keker.com)>; Laresa Brown <[LBrown@keker.com](mailto:LBrown@keker.com)>; Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Gil Ben-Ezra <[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>

**Cc:** NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>; Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

**[EXTERNAL]**

---

Hi Christine:

Hope all is well. Following up on the below. LMK, thanks,

Sol

SOLOMON GENET



MELAND | BUDWICK

3200 Southeast Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131

305-358-6363

[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)

[www.melandbudwick.com](http://www.melandbudwick.com)

Download [Vcard](#)

---

**From:** Christine Zaleski <[CZaleski@keker.com](mailto:CZaleski@keker.com)>

**Sent:** Monday, September 18, 2023 3:26 PM

**To:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>; Laresa Brown <[LBrown@keker.com](mailto:LBrown@keker.com)>; Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Gil Ben-Ezra <[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>

**Cc:** NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>; Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

**EXTERNAL EMAIL:**

Hi Sol,

Thanks for reaching out. We're working on getting this to you.

Regards,

Christine

---

**Christine Zaleski**

Keker, Van Nest & Peters LLP

633 Battery Street

San Francisco, CA 94111-1809

415 773 6693 direct | 415 391 5400 main

[czaleski@keker.com](mailto:czaleski@keker.com) | [vcard](#) | [keker.com](http://keker.com)

---

**From:** Sol Genet <[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>

**Sent:** Monday, September 18, 2023 10:32 AM

**To:** Laresa Brown <[LBrown@keker.com](mailto:LBrown@keker.com)>; Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>;  
Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Gil Ben-Ezra  
<[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>

**Cc:** NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>; Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Subject:** RE: Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

**[EXTERNAL]**

---

Counsel:

Hope all is well.

The attached responses do not comply with R. 33 as they are not signed under oath. Please promptly provide an amended response which complies with the Rule.

Thanks, and we will be in touch re M&C soon.

Sol

SOLOMON GENET



MELAND | BUDWICK

3200 Southeast Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131

305-358-6363

[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)

[www.melandbudwick.com](http://www.melandbudwick.com)

Download [Vcard](#)

---

**From:** Laresa Brown <[LBrown@keker.com](mailto:LBrown@keker.com)>

**Sent:** Friday, September 15, 2023 8:43 PM

**To:** [notices@bankruptcyreno.com](mailto:notices@bankruptcyreno.com); Michael Budwick <[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)>; Sol Genet  
<[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)>; Meaghan Murphy <[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)>; Gil Ben-Ezra  
<[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)>; Alex Brody <[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)>

**Cc:** NPSOLAR <[NPSOLAR@keker.com](mailto:NPSOLAR@keker.com)>; Paul von Autenried <[PvonAutenried@keker.com](mailto:PvonAutenried@keker.com)>

**Subject:** Christina W. Lovato v. Nixon Peabody LLP, Adv. Case No. 21-05072-gs

**EXTERNAL EMAIL:**

Dear Counsel:



Attached please find the following, served herein on today's date:

- DEFENDANT NIXON PEABODY LLP'S RESPONSE TO PLAINTIFF'S FOURTH SET OF INTERROGATORIES

Please contact our office with any questions you may have.

With kind regards,

Laresa Brown

---

**Laresa Brown**

Legal Secretary

Keker, Van Nest & Peters LLP

633 Battery Street

San Francisco, CA 94111-1809

415 676 2281 direct | 415 391 5400 main

[lbrown@keker.com](mailto:lbrown@keker.com) | [keker.com](http://keker.com)

## **EXHIBIT 2**

Jeffrey L. Hartman, Esq.  
Nevada Bar No. 1607  
**HARTMAN & HARTMAN**  
510 W. Plumb Lane, Suite B  
Reno, NV 89509  
T: (775) 324-2800  
F: (775) 324-1818  
[notices@bankruptcyreno.com](mailto:notices@bankruptcyreno.com)

Michael S. Budwick, Esq. #938777 – Admitted *Pro Hac Vice*  
Solomon B. Genet, Esq. #617911 – Admitted *Pro Hac Vice*  
Meaghan E. Murphy, Esq. #102770 – Admitted *Pro Hac Vice*  
Gil Ben-Ezra, Esq. #118089 – Admitted *Pro Hac Vice*  
Alexander E. Brody, Esq. #1025332 – Admitted *Pro Hac Vice*  
**MELAND BUDWICK, P.A.**  
3200 Southeast Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
T: (305) 358-6363  
F: (305) 358-1221  
[mbudwick@melandbudwick.com](mailto:mbudwick@melandbudwick.com)  
[sgenet@melandbudwick.com](mailto:sgenet@melandbudwick.com)  
[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)  
[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)  
[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)

Attorneys for Christina Lovato, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re  
DOUBLE JUMP, INC.  
  
Debtor.

Lead Case No.: BK-19-50102-gs  
(Chapter 7)

Substantively consolidated with:

19-50130-gs	DC Solar Solutions, Inc.
19-50131-gs	DC Solar Distribution, Inc.
19-50135-gs	DC Solar Freedom, Inc.

CHRISTINA W. LOVATO,  
  
Plaintiff,  
  
v.  
  
NIXON PEABODY LLP,  
  
Defendant.

Adversary No.: 21-05072-gs

**PLAINTIFF'S FOURTH SET OF  
INTERROGATORIES TO  
DEFENDANT NIXON PEABODY, LLP**

Christina W. Lovato, as the chapter 7 trustee (“*Plaintiff*” or “*Trustee*”) for the bankruptcy estates of DC Solar Solutions, Inc., DC Solar Distribution, Inc., DC Solar Freedom, Inc., and Double Jump, Inc., pursuant to *Fed. R. Civ. P.* 33, made applicable to this proceeding

1 by *Fed. R. Bankr. P.* 7033, requests Defendant Nixon Peabody, LLP, in accordance with the  
2 Instructions included herein, to answer under oath the interrogatories to follow, and serve a copy  
3 of such answers on the undersigned attorney within thirty (30) days from the date of service  
4 hereof or such shorter time as ordered by the Court.

5 **CERTIFICATE OF SERVICE**

6 I certify that on August 16, 2023, I caused the document listed below to be served:

7 **PLAINTIFF'S FOURTH SET OF INTERROGATORIES TO**  
8 **DEFENDANT NIXON PEABODY, LLP**

9 I caused to be served the above-named document(s) as indicated below:

10 Via Electronic Mail to:

11 Elliot R. Peters [epeters@keker.com](mailto:epeters@keker.com)  
12 Eric H. MacMichael [emacmichael@keker.com](mailto:emacmichael@keker.com)  
13 Julia L. Allen [jallen@keker.com](mailto:jallen@keker.com)  
14 Ben D. Rothstein [brothstein@keker.com](mailto:brothstein@keker.com)  
15 Bailey W. Heaps [bheaps@keker.com](mailto:bheaps@keker.com)  
16 Christine Zaleski [czaleski@keker.com](mailto:czaleski@keker.com)  
17 Louis M. Bubala III [lbubala@kcnvlaw.com](mailto:lbubala@kcnvlaw.com)  
18 Distribution list [npsolar@keker.com](mailto:npsolar@keker.com)

19 DATED: August 16, 2023.

20 /s/Solomon B. Genet  
21 Solomon B. Genet, Esq.  
22  
23  
24  
25  
26  
27  
28

**DEFINITIONS**

1 A. The connectives “and” and “or” shall be construed either disjunctively or  
2 conjunctively as necessary to bring within the scope of the discovery request all responses that  
3 might otherwise be construed to be outside of its scope.  
4

5 B. The use of the singular form of any word includes the plural and vice versa.

6 C. “Auditor Letters” shall mean the three letters attached as Exhibit 1, Exhibit 2, and  
7 Exhibit 3.

8 D. “Communication(s)” mean any oral or written statement, dialogue, colloquy,  
9 discussion, conversation, or conveyance or receipt of information, and also means any transfer of  
10 thoughts or ideas between persons by means of Documents, including any transfer of data from  
11 one location to another by electronic or similar means, such as through e-mails, voicemails, or  
12 text messages, instant messages, social media post or messaging, or any other kind of electronic  
13 transfer of information.

14 E. “Debtor(s)” or “DC Solar” shall mean DC Solar Solutions, Inc., DC Solar  
15 Distribution, Inc., DC Solar Freedom, Inc., and Double Jump, Inc.

16 F. The term “describe,” as used in these interrogatories, means to describe with  
17 particularity all known facts, including without limitation describing dates, participants, and all  
18 substantive information that bears upon or relates to the matter that is the subject of the inquiry.

19 G. The term “document,” as used in these interrogatories, means any original and  
20 every nonidentical copy, reproduction, or draft of any document, writing, or record, within the  
21 broadest meaning under the Federal Rules of Civil Procedure, in YOUR possession, custody, or  
22 control, including but not limited to correspondence, memoranda, communications, minutes or  
23 records of meetings or conferences, lists of persons attending meetings or conferences,  
24 summaries, records of conversations, text messages, instant messaging logs, social media  
25 postings, social media messages, scripts, statements, announcements, tape recordings, audio  
26 recordings, electronic voice message recordings, motion pictures, video recordings, transcripts,  
27 drafts, notes, notebooks, logs, drawings, graphs, charts, photographs, data compilations, intake  
28 forms, time cards, computer records or printouts, fax communications, email or other

1 communications, metadata, computer files, reports, and opinions, whether printed, recorded,  
2 handwritten, stored electronically or on computer disc or in some other tangible medium of  
3 expression from which the information can be retrieved, perceived, or understood.

4 H. The term “identify,” as used in these interrogatories, means to establish the  
5 identity of some person and/or the nature and definitive characteristics of something, with as  
6 much specificity as possible.

7 i) For a person or entity, it further means to provide the full name, all known  
8 addresses, all known telephone numbers, and all known email addresses of the person or entity,  
9 or as much of that information as is available to you after a reasonable and diligent search.

10 ii) For a transaction, event, or occurrence, it further means to provide the date,  
11 time, location, and a full description, and to identify the participants.

12 iii) For a document, it further means to provide a Bates number or to otherwise  
13 provide sufficient identifying information to locate that document.

14 iv) For grounds for contentions, it further means to state with specificity any and  
15 all support for the contention, including all factual allegations supporting the contention  
16 and all evidence therefor.

17 I. “Related to,” in any tense or for any derivation thereof, means tending to be  
18 associated with either in logic or reason, should be interpreted as broadly as possible, and  
19 includes but is not limited to (in any tense or derivation) pertaining, referencing, regarding,  
20 concerning, describing, mentioning, constituting, concerning, supporting, corroborating,  
21 demonstrating, proving, evidencing, showing, refuting, disputing, rebutting, controverts or  
22 contradicts.

23 J. “You” and “your” refers to Nixon Peabody, LLP including its employees, agents,  
24 contractors, subsidiaries, parent company, affiliated companies, and other persons acting or  
25 purporting to act on Your behalf, including Your Representative.  
26  
27  
28

**INSTRUCTIONS**

1  
2 A. If You object to answering any Interrogatory or fail to fully respond to any  
3 Interrogatory on the grounds of attorney-client privilege, work/product, or otherwise, you are to:

- 4 1. state the nature of the privilege; and  
5 2. identify the specific grounds on which your objection is based.

6 B. When an Interrogatory request the identification of any person, for each such  
7 person, state the person's:

- 8 1. full name; and  
9 2. current residential address and telephone number.

10 C. When an Interrogatory request the identification of any document, state separately  
11 for each such document:

- 12 1. the title or description of the document;  
13 2. its date; and  
14 3. The person presently having custody, control or possession of the original  
15 and all copies.

16 D. Whenever the space provided is insufficient to fully answer any Interrogatory,  
17 please attached additional pages and indicate the precise Interrogatory and subpart to which the  
18 answer responds.

19 E. Unless stated otherwise, each of the interrogatory requests below are limited to  
20 the time period between January 1, 2010 and December 31, 2018.



**INTERROGATORIES**

1  
2 1. Identify and describe all material facts related to your receipt of, consideration of,  
3 and any response to, each of the Auditor Letters, including but not limited to:

4 a. Whether and, if so, when you received the Auditor Letters.

5 b. Your policies and procedures related to letters from auditors of clients,  
6 such as the Auditor Letters.

7 c. Whether and, if so, when and how, you complied (or did not comply) with  
8 all your policies and procedures related to the Auditor Letters.

9 d. All actions you took upon receipt of the Auditor Letters, including but not  
10 limited to all items and issues you considered in determining whether to respond and how to  
11 respond and what to include or not include in your response.

12 e. Whether you responded and, if so, how, and if not, why not.

13 2. Identify all documents that relate, support, or are materially connected to your  
14 response to interrogatory #1 above.

**Nixon Peabody, LLP**

By: \_\_\_\_\_  
Its:

STATE OF )  
 ) SS:  
COUNTY OF )

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of Nixon Peabody LLP, who after being duly sworn, deposes and says that the foregoing Answers to Interrogatories are true and correct to the best of his knowledge, information and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County and State aforementioned, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public, State of

My commission expires:  
Personally known \_\_\_\_\_ or  
Produced Identification \_\_\_\_\_  
Type of ID Produced \_\_\_\_\_

My Commission Expires:



A Clean Energy Company

August 19, 2015

Nixon Peabody LLP  
One Embarcadero Center  
San Francisco, CA 94111-360

Our auditors, Montage Services Inc., are conducting an audit of our financial statements at December 31, 2014 and for the year then ended. This letter will serve as our consent for you to furnish to our auditors all the information requested herein. Accordingly, please furnish to them the information requested below involving matters with respect to which you have been engaged and to which you have devoted substantive attention on behalf of the Company in the form of legal consultation or representation.

Pending or Threatened Litigation, Claims, and Assessments (excluding unasserted claims and assessments)

Please prepare a description of all material litigation, claims, and assessments (excluding unasserted claims and assessments). Materiality for purposes of this letter includes items involving amounts exceeding \$450,000 individually or in the aggregate. The description of each matter should include:

1. the nature of the litigation,
2. the progress of the matter to date,
3. how management is responding or intends to respond to the litigation, e.g., to contest the matter vigorously or to seek an out of court settlement, and
4. an evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss.

Also, please identify any pending or threatened litigation, claims, and assessments with respect to which you have been engaged but as to which you have not yet devoted substantive attention.

Unasserted Claims and Assessments

We have represented to our auditors that there are no unasserted possible claims or assessments that you have advised us are probable of assertion and must be disclosed in accordance with *FASB Accounting Standards Codification 450, Contingencies*.

We understand that whenever, in the course of performing legal services for us with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, if you have formed a professional conclusion that we should disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to us, you will so advise us and will consult with us concerning the question of such disclosure and the applicable requirements of *FASB Accounting Standards Codification 450, Contingencies* (excerpts of which can be found in the ABA's *Auditor's Letter Handbook*). Please specifically confirm to our auditors that our understanding is correct.

Response

Your response should include matters that existed as of December 31, 2014, and during the period from that date to the effective date of your response. Please specify the effective date of your response if it is other than the date of reply.

Please specifically identify the nature of, and reasons for, any limitations on your response.

Our auditors expect to have the audit completed by about August 26, 2015. They would appreciate receiving your reply by that date with a specified effective date no earlier than August 19, 2015. You may also be requested to provide verbal updates to your written response at a later date. We appreciate your timely response to such requests.

Other Matters

Please also indicate the amount we were indebted to you for services and expenses (billed or unbilled) on December 31, 2014.

Very truly yours,



Jeff Carpo  
President & CEO  
DC Solar Solutions, Inc.  
135 Mason Circle  
Concord, CA 94520





A Clean Energy Company

July 11, 2016

Nixon Peabody LLP  
1 Embarcadero Center Ste 1800  
San Francisco, California 94111

RECEIVED

JUL 18 2016

AUDIT LETTERS

Our auditors, Montage Services Inc., are conducting an audit of our financial statements at December 31, 2015 and for the year then ended. This letter will serve as our consent for you to furnish to our auditors all the information requested herein. Accordingly, please furnish to them the information requested below involving matters with respect to which you have been engaged and to which you have devoted substantive attention on behalf of the Company in the form of legal consultation or representation.

Pending or Threatened Litigation, Claims, and Assessments (excluding unasserted claims and assessments)

Please prepare a description of all material litigation, claims, and assessments (excluding unasserted claims and assessments). Materiality for purposes of this letter includes items involving amounts exceeding \$1,000,000 individually or in the aggregate. The description of each matter should include:

1. the nature of the litigation,
2. the progress of the matter to date,
3. how management is responding or intends to respond to the litigation, e.g., to contest the matter vigorously or to seek an out of court settlement, and
4. an evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss.

Also, please identify any pending or threatened litigation, claims, and assessments with respect to which you have been engaged but as to which you have not yet devoted substantive attention.

Unasserted Claims and Assessments

We have represented to our auditors that there are no unasserted possible claims or assessments that you have advised us are probable of assertion and must be disclosed in accordance with *FASB Accounting Standards Codification 450, Contingencies*.

We understand that whenever, in the course of performing legal services for us with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, if you have formed a professional conclusion that we should disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to us, you will so advise us and will consult with us concerning the question of such disclosure and the applicable requirements of *FASB Accounting Standards Codification 450, Contingencies* (excerpts of which can be found in the ABA's *Auditor's Letter Handbook*). Please specifically confirm to our auditors that our understanding is correct.



Response

Your response should include matters that existed as of December 31, 2015, and during the period from that date to the effective date of your response. Please specify the effective date of your response if it is other than the date of reply.

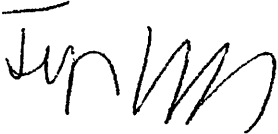
Please specifically identify the nature of, and reasons for, any limitations on your response.

Our auditors expect to have the audit completed by about June 30, 2016. They would appreciate receiving your reply by that date with a specified effective date no earlier than June 28, 2016. You may also be requested to provide verbal updates to your written response at a later date. We appreciate your timely response to such requests.

Other Matters

Please also indicate the amount we were indebted to you for services and expenses (billed or unbilled) on December 31, 2015.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeff Carpo", with a horizontal line above the first name.

Jeff Carpo  
President & CEO  
DC Solar Solutions, Inc.  
135 Mason Circle  
Concord, CA 94520



A Clean Energy Company

August 28, 2017

Nixon Peabody LLP  
1 Embarcadero Center Ste 1800  
San Francisco, California 94111

Our auditors, Montage Services Inc., are conducting an audit of our financial statements at December 31, 2016 and for the year then ended. This letter will serve as our consent for you to furnish to our auditors all the information requested herein. Accordingly, please furnish to them the information requested below involving matters with respect to which you have been engaged and to which you have devoted substantive attention on behalf of the Company in the form of legal consultation or representation.

Pending or Threatened Litigation, Claims, and Assessments (excluding unasserted claims and assessments)

Please prepare a description of all material litigation, claims, and assessments (excluding unasserted claims and assessments). Materiality for purposes of this letter includes items involving amounts exceeding \$1,000,000 individually or in the aggregate. The description of each matter should include:

1. the nature of the litigation,
2. the progress of the matter to date,
3. how management is responding or intends to respond to the litigation, e.g., to contest the matter vigorously or to seek an out of court settlement, and
4. an evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss.

Also, please identify any pending or threatened litigation, claims, and assessments with respect to which you have been engaged but as to which you have not yet devoted substantive attention.

Unasserted Claims and Assessments

We have represented to our auditors that there are no unasserted possible claims or assessments that you have advised us are probable of assertion and must be disclosed in accordance with *FASB Accounting Standards Codification 450, Contingencies*.

We understand that whenever, in the course of performing legal services for us with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, if you have formed a professional conclusion that we should disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to us, you will so advise us and will consult with us concerning the question of such disclosure and the applicable requirements of *FASB Accounting Standards Codification 450, Contingencies* (excerpts of which can be found in the ABA's *Auditor's Letter Handbook*). Please specifically confirm to our auditors that our understanding is correct.



Response

Your response should include matters that existed as of December 31, 2016, and during the period from that date to the effective date of your response. Please specify the effective date of your response if it is other than the date of reply.

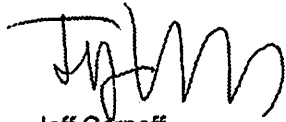
Please specifically identify the nature of, and reasons for, any limitations on your response.

Our auditors expect to have the audit completed by about September 15, 2017. They would appreciate receiving your reply by that date with a specified effective date no earlier than September 10, 2017. You may also be requested to provide verbal updates to your written response at a later date. We appreciate your timely response to such requests.

Other Matters

Please also indicate the amount we were indebted to you for services and expenses (billed or unbilled) on December 31, 2016.

Very truly yours,



Jeff Carpo  
President & CEO  
DC Solar Solutions, Inc.  
4901 Park Road  
Benicia, CA 94510



## **EXHIBIT 3**

KEKER, VAN NEST & PETERS LLP  
 ELLIOT R. PETERS – *Admitted PHV*  
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Attorneys For Defendant Nixon Peabody LLP

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re  
 DOUBLE JUMP, INC.  
 Debtor,

X Affects DC Solar Solutions, Inc.  
X Affects DC Solar Distributions, Inc.  
X Affects DC Solar Freedom, Inc.  
X Affects Double Jump, Inc.

Lead Case No. BK-19-50102-gs  
 (Chapter 7)

Substantively Consolidated with:

19-50130-gs DC Solar Solutions, Inc.  
 19-50131-gs DC Solar Distribution, Inc.  
 19-50135-gs DC Solar Freedom, Inc.

CHRISTINA W. LOVATO,  
 Plaintiff,  
 v.  
 NIXON PEABODY LLP,  
 Defendant.

Adversary Proceeding No.: 21-05072-gs

**DEFENDANT NIXON PEABODY LLP'S  
 RESPONSE TO PLAINTIFF'S FOURTH  
 SET OF INTERROGATORIES**

PROPOUNDING PARTY: Plaintiff CHRISTINA W. LOVATO

RESPONDING PARTY: Defendant NIXON PEABODY LLP

SET NO.: FOUR

Pursuant to Federal Rule of Bankruptcy Procedure 7033 and Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Nixon Peabody LLP (“Nixon Peabody”) hereby provides the following objections and responses to Plaintiff’s Fourth Set of Interrogatories to Nixon Peabody. Nixon Peabody reserves the right to amend or supplement these objections and responses to the extent allowed by the Federal Rules of Civil Procedure or as otherwise permitted.

### **GENERAL OBJECTIONS**

The following General Objections apply to each of the Interrogatories whether or not specifically referred to and/or incorporated in each response:

1. Nixon Peabody’s responses are based on current, accessible, available information and belief. Nixon Peabody’s investigation is still ongoing, and it does not yet know the full spectrum of facts related to the claims and defenses asserted in this case. Also, facts and evidence not known may be imperfectly understood, and, in good faith, may not be included in these responses. Nixon Peabody reserves the right to modify or supplement its responses with information that may be subsequently discovered through its investigation and discovery while the case is pending. Nixon Peabody also reserves the right to conduct discovery with reference to, and to offer into evidence at trial or other proceedings in this action, all witnesses, facts, and evidence, notwithstanding the absence of references to such witnesses, facts, and evidence in these responses.

2. Nixon Peabody is responding to the Interrogatories as Nixon Peabody reasonably interprets and understands the language of the Interrogatories. If Plaintiff subsequently asserts any interpretation of any individual Interrogatory that differs from Nixon Peabody’s reasonable understanding, Nixon Peabody reserves its right to supplement the responses and/or any objections herein.

3. Nixon Peabody’s responses shall not be construed in any way as an admission that any definition provided by Plaintiff or any assertion made is either factually correct or legally binding upon Nixon Peabody, or a waiver of any of Nixon Peabody’s objections, including, but not limited to, objections regarding privilege, confidentiality, and discoverability.

1           4.       Nixon Peabody objects to each Interrogatory to the extent that it seeks information  
2 that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to  
3 the discovery of admissible evidence, and to the extent the Interrogatory calls for information  
4 unrelated to the temporal scope of this matter.

5           5.       Nixon Peabody objects to each Interrogatory to the extent it fails to specify a  
6 relevant time period for the information sought or seeks information pertaining to periods of time  
7 either before or after the periods of time at issue in this action, thereby causing the Interrogatory  
8 to: (a) be overbroad, (b) be burdensome and oppressive, and (c) seek information that is neither  
9 relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of  
10 admissible evidence.

11           6.       Nixon Peabody objects to each Interrogatory to the extent that it seeks information  
12 protected by the attorney-client privilege, the attorney work product doctrine, common interest  
13 privilege, joint defense privilege, spousal privilege, a lawyer's duty of confidentiality to current  
14 and former clients, and/or any other applicable privilege or protection, arising from either (a)  
15 Nixon Peabody's work for entities other than DC Solar or (b) Nixon Peabody's counsel's work  
16 for Nixon Peabody itself. Moreover, even if Nixon Peabody inadvertently provides information  
17 protected from disclosure by the foregoing privileges, Nixon Peabody does not waive its right to  
18 assert those privileges and/or objections to disclosure subsequently. Nixon Peabody expressly  
19 reserves the right to supplement and revise its responses and objections should further  
20 investigation reveal that documents or information protected by any of the privileges described  
21 herein were disclosed.

22           7.       Nixon Peabody objects to each Interrogatory to the extent that it calls for  
23 information that qualifies for protection under standards developed under Federal Rule of Civil  
24 Procedure 26(c), including, but not limited to, proprietary information not generally known to the  
25 public that contains sensitive financial, technical, or competitive information, trade secrets, or  
26 current research and development that may harm Nixon Peabody's business position if known by  
27 other parties, and that Nixon Peabody would not disclose to competitors or third parties within the  
28

1 ordinary course of business. Nixon Peabody provides any information subject to the protective  
2 order governing such information entered by this Court.

3 8. Nixon Peabody objects to each Interrogatory that seeks information in the custody  
4 or control of Plaintiff and/or third parties, and further objects to each Interrogatory that seeks  
5 publicly available information, or information that Plaintiff could obtain without Nixon  
6 Peabody's response.

7 9. Nixon Peabody objects to the definitions of "You" and "Your" to the extent the  
8 definitions seek information not within Nixon Peabody's possession, custody or control; or  
9 purport to require Nixon Peabody to seek documents in the possession, custody, or control of  
10 third parties; or seek information that is neither relevant to the subject matter of this litigation nor  
11 reasonably calculated to lead to the discovery of relevant or admissible evidence. Nixon Peabody  
12 further objects to the definitions to the extent the definitions render any request vague,  
13 ambiguous, overbroad, or unduly burdensome.

14 10. Nixon Peabody objects to the definition of "related to" to the extent the definition  
15 renders the Interrogatories vague, ambiguous, overly broad, or unduly burdensome; or seeks  
16 information that is neither relevant to the subject matter of this litigation nor reasonably  
17 calculated to lead to the discovery of relevant or admissible evidence.

18 11. Nixon Peabody objects to Instructions A, B, C, and D to the extent they require  
19 information beyond the obligations set forth in the Federal Rules of Civil Procedure or beyond the  
20 text of the Interrogatory itself. Nixon Peabody will produce privilege logs in conformity with its  
21 obligations under the Federal Rules of Civil Procedure, local rules, and any other applicable law.  
22 Nixon Peabody will identify any specific documents using the Bates-stamped production number  
23 for that document.

24 12. Nixon Peabody objects to Plaintiffs' instructions and definitions to the extent they  
25 purport to impose duties and obligations in addition to or inconsistent with those imposed by the  
26 Federal Rules of Civil Procedure.

**RESPONSES TO INTERROGATORIES:**

**INTERROGATORY NO. 1:**

Identify and describe all material facts related to your receipt of, consideration of, and any response to, each of the Auditor Letters, including but not limited to:

- a. Whether and, if so, when you received the Auditor Letters.
- b. Your policies and procedures related to letters from auditors of clients, such as the Auditor Letters.
- c. Whether and, if so, when and how, you complied (or did not comply) with all your policies and procedures related to the Auditor Letters.
- d. All actions you took upon receipt of the Auditor Letters, including but not limited to all items and issues you considered in determining whether to respond and how to respond and what to include or not include in your response.
- e. Whether you responded and, if so, how, and if not, why not.

**RESPONSE TO INTERROGATORY NO. 1:**

Nixon Peabody objects to this Interrogatory as overly broad, vague, ambiguous, unduly burdensome, and neither relevant nor reasonably calculated to lead to the discovery of relevant evidence to the extent it seeks “all material facts,” “all your policies and procedures,” “all actions,” and “all items and issues.” Nixon Peabody also objects to this Interrogatory to the extent it seeks privileged communications between Nixon Peabody and its counsel, including its Audit Letters personnel who report to the General Counsel. Nixon Peabody objects because this incorrectly numbered Interrogatory contains five discrete subparts, in reference to three different requests for a response to an Auditor Letter, and is therefore compound. (Indeed, based on the way the Trustee counts interrogatories, this Interrogatory counts as fifteen separate requests.) Nixon Peabody further objects to this Interrogatory to the extent that the information sought is equally within DC Solar’s and the Trustee’s possession, and objects to the extent the Interrogatory purports to impose on Nixon Peabody burdens that are greater than what is required by the applicable discovery rules.

Without waiving any of the objections stated above, but specifically subject to them,

1 Nixon Peabody responds to this Interrogatory as follows:

2 Nixon Peabody received the Auditor Letter dated August 19, 2015 no later than  
3 September 2, 2015. Nixon Peabody drafted a response to the August 19, 2015 Auditor Letter that  
4 was dated September 2, 2015. The September 2, 2015 draft was addressed to Montage Services  
5 Inc., at 281 Ellis Street, San Francisco, CA 94102, and was to be sent by fax and first class mail.  
6 The September 2, 2015 draft copied “Jeff Carpoff, President & CEO.”

7 Discussions regarding the August 19, 2015 Auditor Letter occurred between September 2,  
8 2015 and January 11, 2016. The August 19, 2015 Auditor Letter was discussed between and  
9 among at least the following individuals at Nixon Peabody: Christina Scardino, James Duffy,  
10 Richard Cogen, Forrest Milder, Stephanie Rallo, and Brian Fitzpatrick. In the course of those  
11 discussions, Nixon Peabody discussed whether there were any potential liabilities that they were  
12 aware of that they would need to disclose in their response. The Nixon Peabody attorneys  
13 working on the DC Solar engagement reviewed transaction documents and consulted members of  
14 Nixon Peabody’s Audit Letters department, a division of the General Counsel’s office, in  
15 connection with those discussions. These communications with the Audit Letters department  
16 contain requests for or provision of legal advice and are privileged.

17 Nixon Peabody authored a draft response to the August 19, 2015 Auditor Letter and  
18 circulated it among at least the following individuals, who were either senders, recipients, or  
19 individuals copied on emails attaching drafts: Christina Scardino, James Duffy, Richard Cogen,  
20 Forrest Milder, Deborah Bouchey, Ginny Johnson, and Stephanie Rallo. In the draft response,  
21 Nixon Peabody stated that Nixon Peabody was “not, as of the Fiscal Year End or the Effective  
22 Date, engaged to give substantive attention to, or represent the Client in connection with, loss  
23 contingencies coming within the scope of clause (a) of Paragraph 5 of the American Bar  
24 Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for  
25 Information (December 1975).” The Fiscal Year End listed was December 31, 2014, which is the  
26 date specified in the client’s August 19, 2015 letter. The Effective Date listed was November 2,  
27 2015. Nixon Peabody attached the American Bar Association Statement to its response. Nixon  
28 Peabody also stated that DC Solar was “indebted [to Nixon Peabody] for services and expenses in

1 the amount of \$33,909.00, and had accumulated approximately \$2,936.50 in unbilled fees for  
2 services and expenses.”

3 Nixon Peabody received the Auditor Letter dated July 11, 2016 on July 18, 2016. Nixon  
4 Peabody drafted a response to the July 11, 2016 Auditor Letter that was dated July 20, 2016. The  
5 July 20, 2016 draft was addressed to Montage Services Inc., at 281 Ellis Street, San Francisco,  
6 CA 94102, and was to be sent by fax and first class mail. The July 20, 2016 draft copied “Jeff  
7 Carpoff, President & CEO.”

8 Discussions regarding the July 11, 2016 Auditor Letter occurred between July 20, 2016  
9 and October 24, 2016. The July 11, 2016 Auditor Letter was discussed between and among at  
10 least the following individuals at Nixon Peabody: Lisa Bryning, James Duffy, Richard Cogen,  
11 and Forrest Milder. Nixon Peabody discussed whether there were any potential liabilities that  
12 they were aware of that they would need to disclose in their response. The Nixon Peabody  
13 attorneys working on the DC Solar engagement reviewed transaction documents and consulted  
14 with DC Solar’s outside counsel, Ari Lauer, regarding these issues. They also consulted members  
15 of Nixon Peabody’s Audit Letters department, a division of the General Counsel’s office, in  
16 connection with those discussions. These communications with the Audit Letters department  
17 contain requests for or provision of legal advice and are privileged.

18 Nixon Peabody authored a draft response to the July 11, 2016 Auditor Letter and  
19 circulated it among at least the following individuals, who were either senders, recipients, or  
20 individuals copied on emails attaching drafts: Lisa Bryning, James Duffy, Richard Cogen,  
21 Forrest Milder, Deborah Bouchey, Ginny Johnson, Laura Quant, and Stephanie Rallo. In the  
22 draft response, Nixon Peabody stated that Nixon Peabody was “not, as of the Fiscal Year End or  
23 the Effective Date, engaged to give substantive attention to, or represent the Client in connection  
24 with, loss contingencies coming within the scope of clause (a) of Paragraph 5 of the American  
25 Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for  
26 Information (December 1975).” The Fiscal Year End listed was December 31, 2015, which is the  
27 date specified in the client’s July 11, 2016 letter. The Effective Date listed was July 20, 2016.  
28 Nixon Peabody attached the American Bar Association Statement to its response. Nixon Peabody



1 also stated that DC Solar was “indebted [to Nixon Peabody] for services and expenses in the  
2 amount of \$175,451.50, and had accumulated approximately \$14,097.00 in unbilled fees for  
3 services and expenses.”

4 Nixon Peabody received the Auditor Letter dated August 28, 2017 no later than  
5 September 22, 2017. Nixon Peabody responded to the August 28, 2017 Auditor Letter in a letter  
6 dated September 22, 2017. The September 22, 2017 letter was addressed to Montage Services  
7 Inc., at 281 Ellis Street, San Francisco, CA 94102, and sent by fax and first class mail. The  
8 September 22, 2017 letter copied “Jeff Carpoff, President & CEO.” The September 22, 2017  
9 letter was signed and placed in the mail on September 25, 2017 by Deborah Bouchey on behalf of  
10 Richard Cogen.

11 Discussions regarding August 28, 2017 Auditor Letter occurred between as early as  
12 September 8, 2017 and September 25, 2017. The August 28, 2017 Auditor Letter was discussed  
13 between and among at least the following individuals at Nixon Peabody: Lisa Bryning, Deborah  
14 Bouchey, Richard Cogen, James Duffy, Forrest Milder, and Joseph Brady. Nixon Peabody  
15 discussed whether there were any potential liabilities that they were aware of that they would  
16 need to disclose in their response. The Nixon Peabody attorneys working on the DC Solar  
17 engagement reviewed transaction documents and consulted with DC Solar’s outside counsel, Ari  
18 Lauer, regarding these issues. They also consulted members of Nixon Peabody’s Audit Letters  
19 department, a division of the General Counsel’s office, in connection with those discussions.  
20 These communications with the Audit Letters department contain requests for or provision of  
21 legal advice and are privileged.

22 Nixon Peabody authored the response to the August 28, 2017 Auditor Letter and  
23 circulated it among at least the following individuals, who were either senders, recipients, or  
24 individuals copied on emails attaching drafts: Lisa Bryning, James Duffy, Richard Cogen,  
25 Forrest Milder, Deborah Bouchey, and Ginny Johnson. In the response, Nixon Peabody stated  
26 that Nixon Peabody was “not, as of the Fiscal Year End or the Effective Date, engaged to give  
27 substantive attention to, or represent the Client in connection with, loss contingencies coming  
28 within the scope of clause (a) of Paragraph 5 of the American Bar Association Statement of

1 Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975)."  
2 The Fiscal Year End listed was December 31, 2016, which is the date specified in the client's  
3 August 28, 2017 letter. The Effective Date listed was September 22, 2017. Nixon Peabody  
4 attached the American Bar Association Statement to its response. Nixon Peabody also stated that  
5 DC Solar was "indebted [to Nixon Peabody] for services and expenses in the amount of  
6 \$78,463.50, and had accumulated approximately \$41,932.50 in unbilled fees for services and  
7 expenses."

8 Nixon Peabody will produce its written policy regarding letters from auditors of clients,  
9 which has been in effect since September 1, 2007. The policy provides guidance on whether and  
10 how to disclose matters in response to auditors' requests. Nixon Peabody followed the policy's  
11 guidance when considering whether and how to disclose matters in response to the Auditor  
12 Letters.

13 **INTERROGATORY NO. 2:**

14 Identify all documents that relate, support, or are materially connected to your response to  
15 interrogatory #1 above.

16 **RESPONSE TO INTERROGATORY NO. 2:**

17 Nixon Peabody objects to this Interrogatory as overly broad, vague, ambiguous, unduly  
18 burdensome, and neither relevant nor reasonably calculated to lead to the discovery of relevant  
19 evidence. In particular, Nixon objects to the phrase "materially connected" as vague and  
20 ambiguous. Nixon Peabody also objects to this Interrogatory to the extent it seeks privileged  
21 communications between Nixon Peabody and its counsel, including its Audit Letters personnel  
22 who report to the General Counsel. Nixon Peabody objects because this incorrectly numbered  
23 Interrogatory, through its reference to incorrectly numbered Interrogatory No. 1, contains five  
24 discrete subparts, in regard to three separate Auditor Letters, and is therefore compound. Nixon  
25 Peabody further objects to this Interrogatory to the extent that the information sought is equally  
26 within DC Solar's and the Trustee's possession, and objects to the extent the Interrogatory  
27 purports to impose on Nixon Peabody burdens that are greater than what is required by the  
28 applicable discovery rules.

1 Without waiving any of the objections stated above, but specifically subject to them,  
2 Nixon Peabody responds to this Interrogatory as follows:

3 Nixon Peabody's response to Interrogatory No. 1 is based on the following documents,  
4 which were already produced to the Trustee:

5 NP\_LOVATO\_00144634;  
6 NP\_LOVATO\_00144636;  
7 NP\_LOVATO\_00144641;  
8 NP\_LOVATO\_00144644;  
9 NP\_LOVATO\_00144646;  
10 NP\_LOVATO\_00144693;  
11 NP\_LOVATO\_00144715;  
12 NP\_LOVATO\_00144717;  
13 NP\_LOVATO\_00145319;  
14 NP\_LOVATO\_00145325;  
15 NP\_LOVATO\_00145330;  
16 NP\_LOVATO\_00145333;  
17 NP\_LOVATO\_00154422;  
18 NP\_LOVATO\_00154430;  
19 NP\_LOVATO\_00154438;  
20 NP\_LOVATO\_00155300;  
21 NP\_LOVATO\_00155308;  
22 NP\_LOVATO\_00177163;  
23 NP\_LOVATO\_00177165;  
24 NP\_LOVATO\_00177168;  
25 NP\_LOVATO\_00177382;  
26 NP\_LOVATO\_00177385;  
27 NP\_LOVATO\_00177388;  
28 NP\_LOVATO\_00177468;  
NP\_LOVATO\_00177471;  
NP\_LOVATO\_00177473;  
NP\_LOVATO\_00177476;  
NP\_LOVATO\_00177481;  
NP\_LOVATO\_00177484;  
NP\_LOVATO\_00177487;  
NP\_LOVATO\_00177490;

1 NP\_LOVATO\_00177498;  
2 NP\_LOVATO\_00177503;  
3 NP\_LOVATO\_00178266;  
4 NP\_LOVATO\_00178271;  
5 NP\_LOVATO\_00178277;  
6 NP\_LOVATO\_00178323;  
7 NP\_LOVATO\_00178331;  
8 NP\_LOVATO\_00178562;  
9 NP\_LOVATO\_00222620;  
10 NP\_LOVATO\_00222723;  
11 NP\_LOVATO\_00222724;  
12 NP\_LOVATO\_00222726;  
13 NP\_LOVATO\_00222729;  
14 NP\_LOVATO\_00223564;  
15 NP\_LOVATO\_00223566;  
16 NP\_LOVATO\_00223591;  
17 NP\_LOVATO\_00223596;  
18 NP\_LOVATO\_00223598;  
19 NP\_LOVATO\_00223601;  
20 NP\_LOVATO\_00306188;  
21 NP\_LOVATO\_00306189;  
22 NP\_LOVATO\_00306197;  
23 NP\_LOVATO\_00306198; and  
24 NP\_LOVATO\_00306271.

25 Dated: September 15, 2023

KEKER, VAN NEST & PETERS LLP

26 By: s/Eric H. MacMichael  
27 ELLIOT R. PETERS  
28 ERIC H. MACMICHAEL

Lead Case No.: BK-19-50102-gs - In re Double Jump, Inc  
Adversary No. 21-05072-gs - Christina W. Lovato v. Nixon Peabody LLP

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker, Van Nest & Peters LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On September 15, 2023, I served the following document(s):

**DEFENDANT NIXON PEABODY LLP'S RESPONSE TO  
PLAINTIFF'S INTERROGATORIES, SET FOUR**

- ☒ by regular **UNITED STATES MAIL** by placing Original in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker, Van Nest & Peters LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.
- ☒ by **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy scanned into an electronic file in Adobe "pdf" format. The transmission was reported as complete and without error.

Executed on September 15, 2023, at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Laresa Brown

Lead Case No.: BK-19-50102-gs - In re Double Jump, Inc  
Adversary No. 21-05072-gs - Christina W. Lovato v. Nixon Peabody LLP

**SERVICE LIST**

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*Attorneys for Plaintiff*  
CHRISTINA LOVATO,  
CHAPTER 7 TRUSTEE

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Solomon B. Genet  
Meaghan E. Murphy  
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Alexander E. Brody  
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[mmurphy@melandbudwick.com](mailto:mmurphy@melandbudwick.com)  
[gbenezra@melandbudwick.com](mailto:gbenezra@melandbudwick.com)  
[abrody@melandbudwick.com](mailto:abrody@melandbudwick.com)

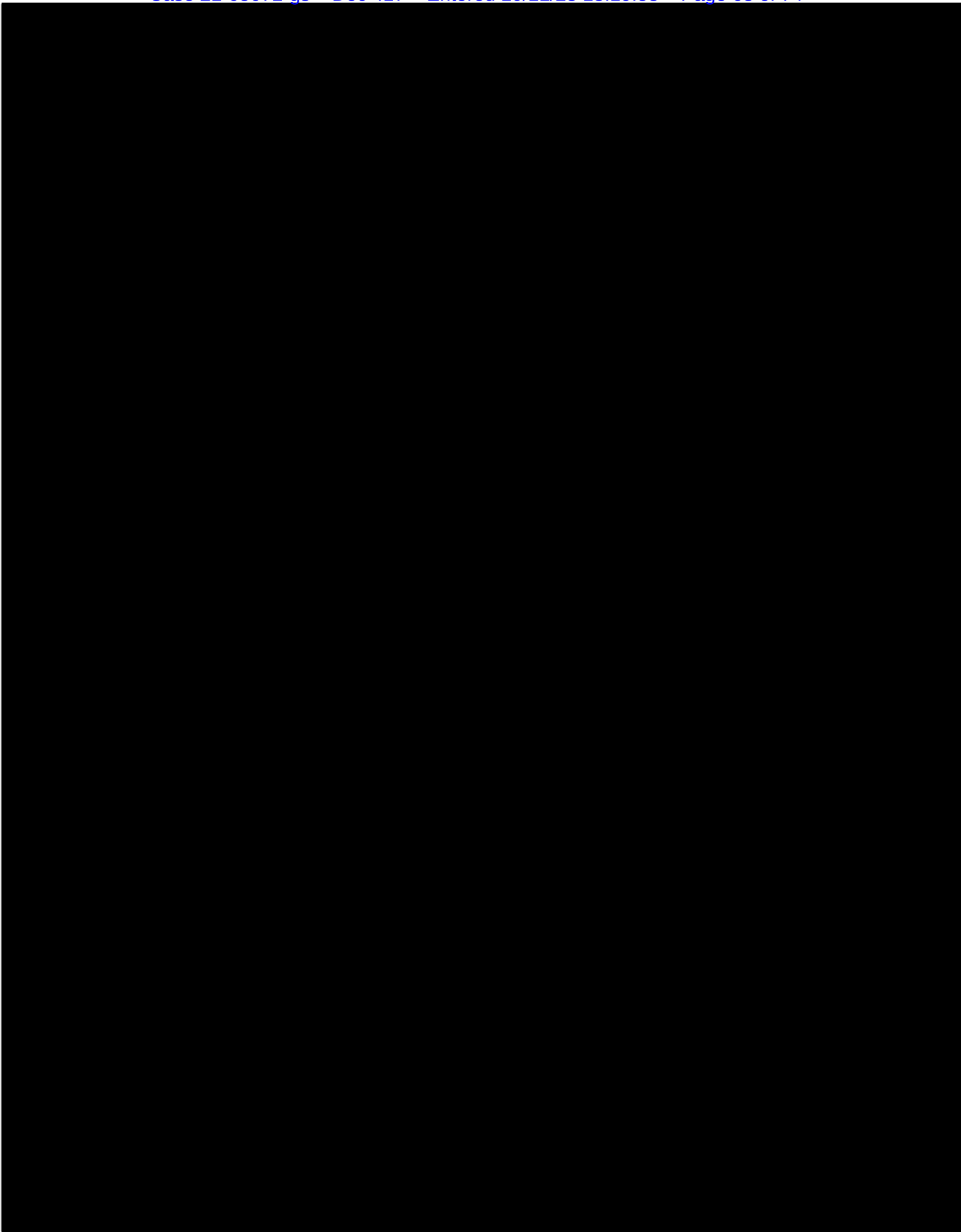
## **EXHIBIT 4**



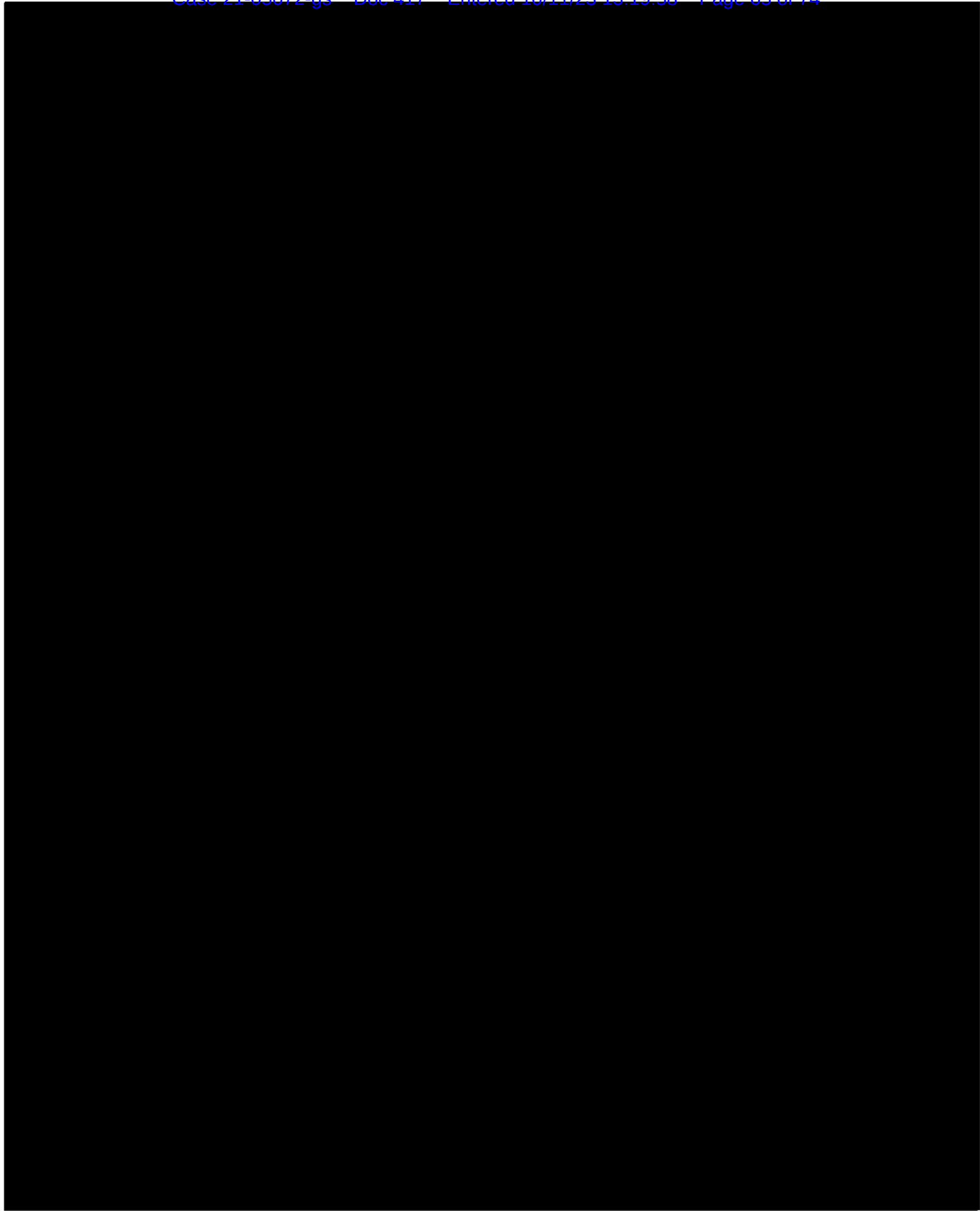


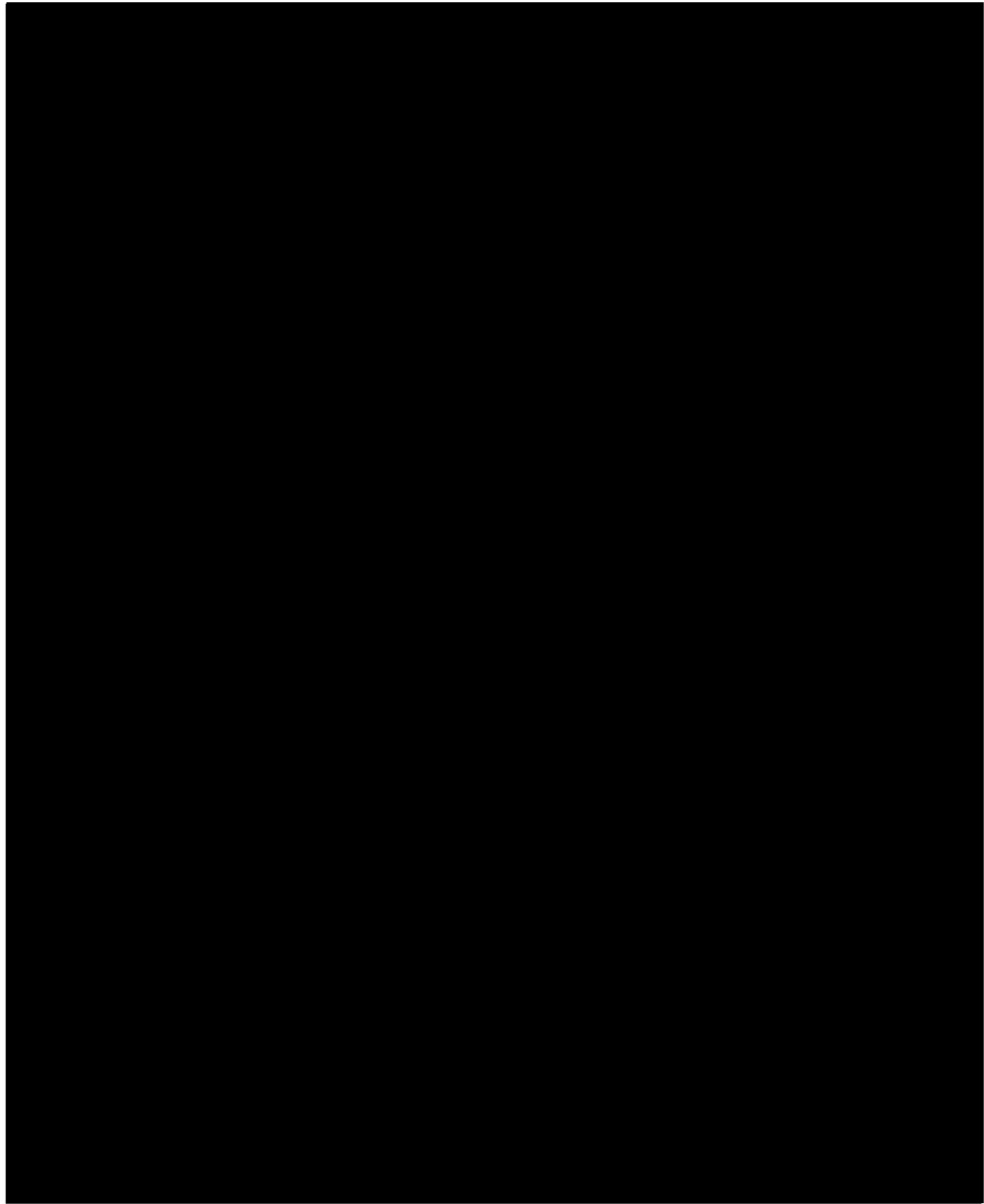


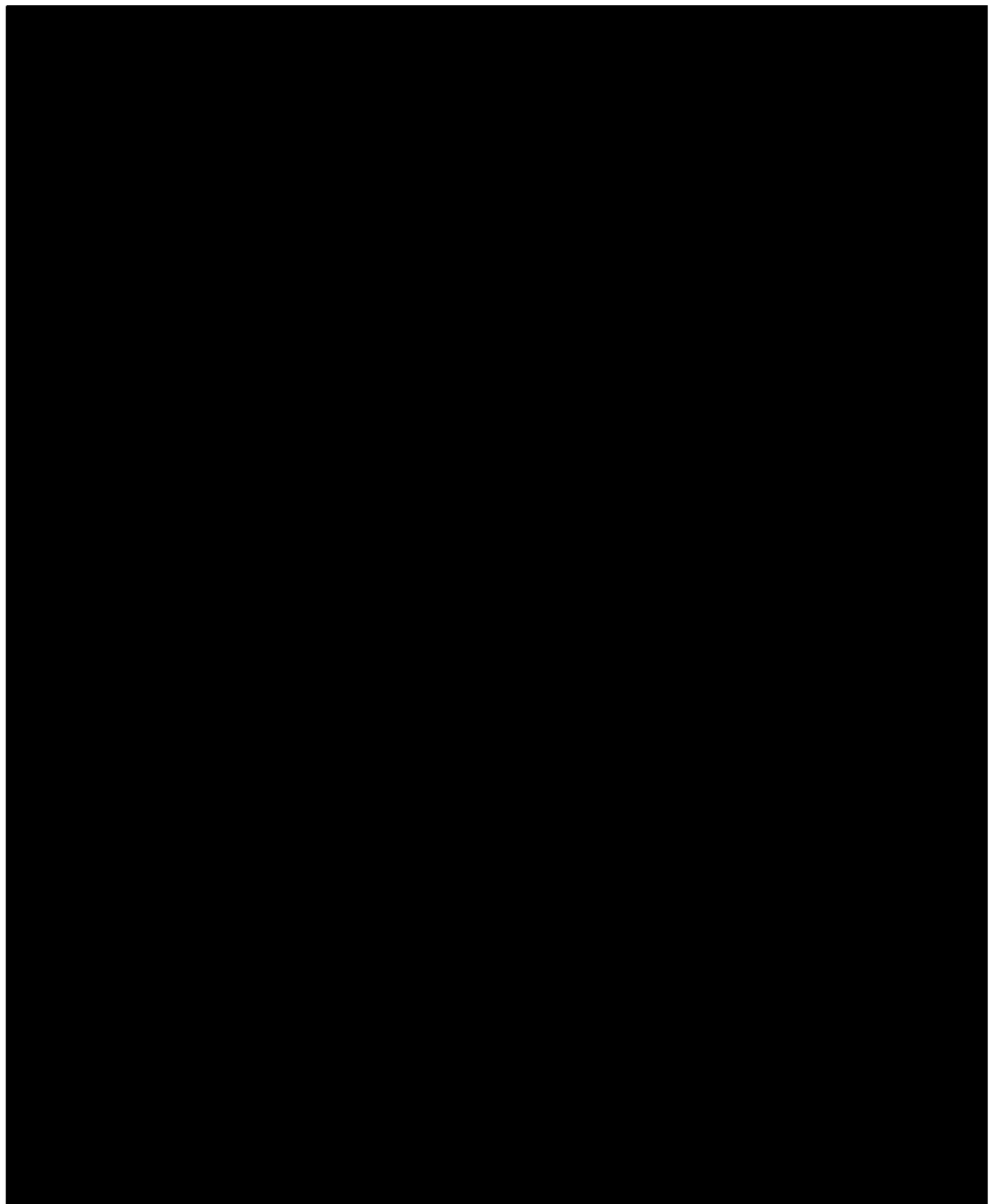


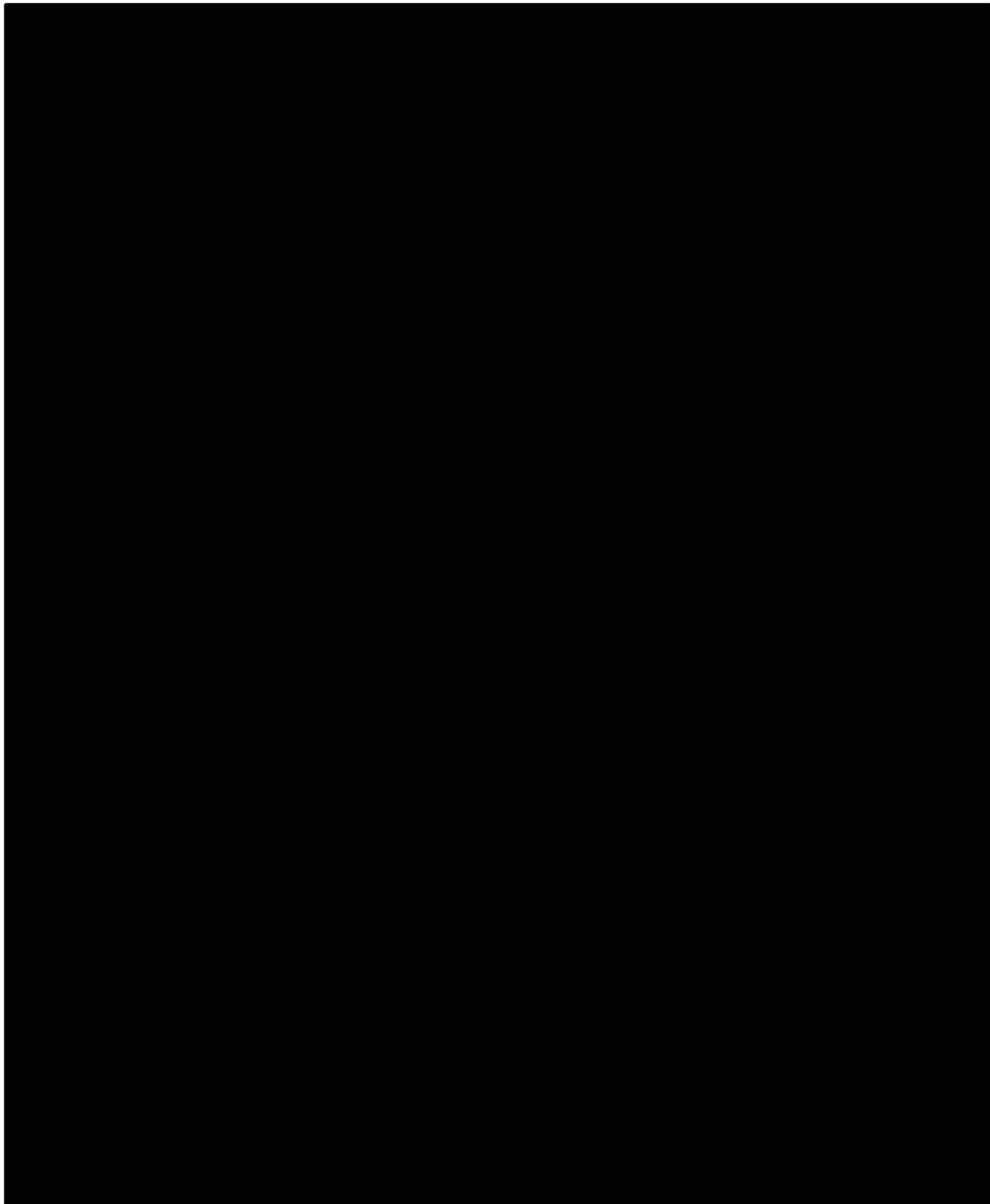


## **EXHIBIT 5**

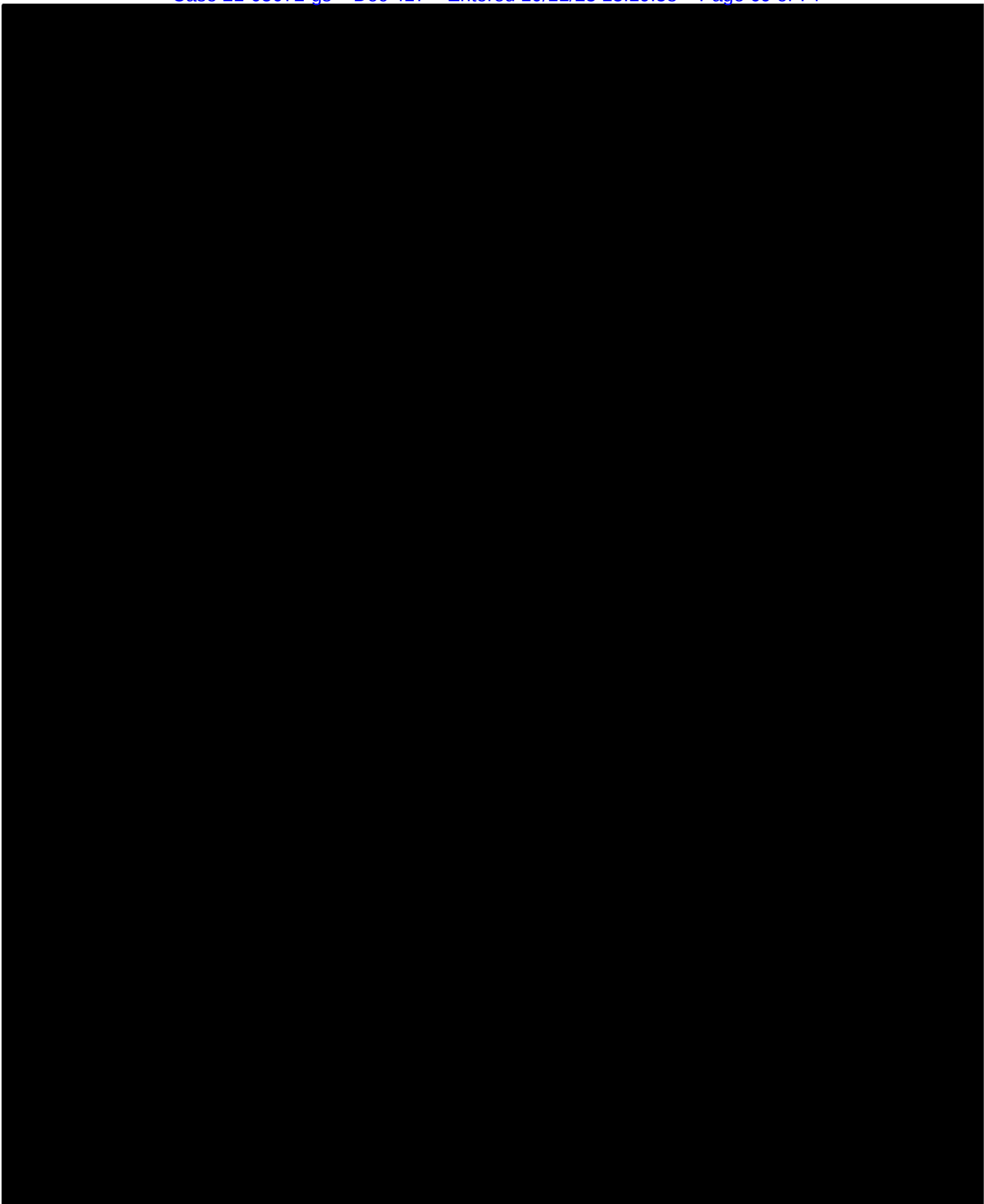


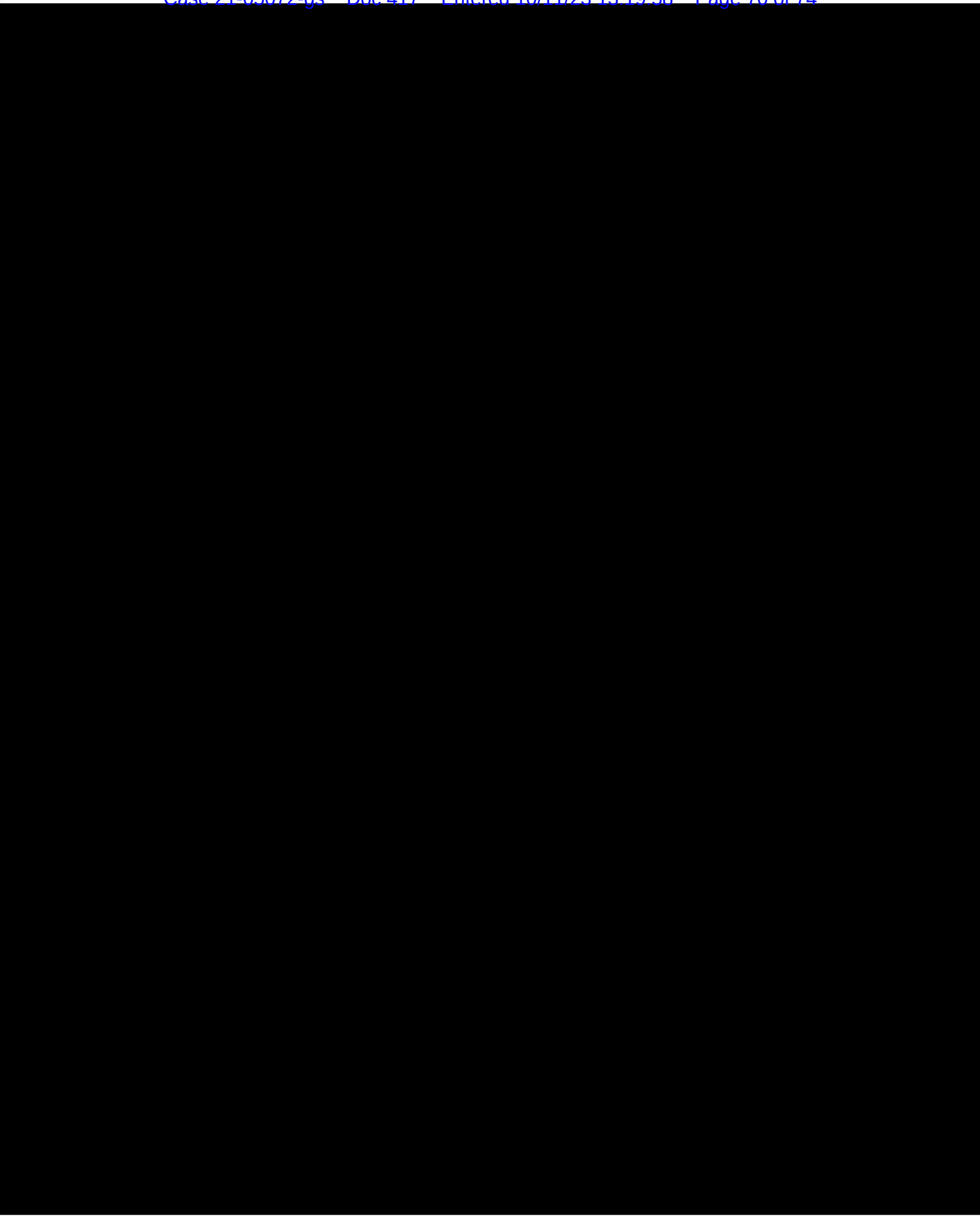












## **EXHIBIT 6**

